

KATV, LLC
KATV-DT, Little Rock, Arkansas
June 2008

REQUEST FOR A FREEZE WAIVER

As the Commission well knows, KATV's 2000 foot tower collapsed earlier this year. Most of the tower is still at KATV's old site in a crumpled mass of twisted metal. Despite this catastrophe, KATV has forged ahead with a rebuilding plan designed to restore KATV's full power, over-the-air digital service on or before February 17, 2009. The underlying maximization application seeks final Commission approval of that plan.

KATV, LLC, licensee of KATV(TV), Little Rock, Arkansas, hereby requests a waiver of the Commission's freeze order that prohibits the filing of applications that increase a station's authorized service area. As demonstrated more fully below, the requested freeze waiver is in the public interest and should be granted because it will enable the Commission to act on KATV's maximized application now and ensure that KATV can restore over-the-air digital service to the Little Rock market without potential conflicts and processing delays from maximization applications filed by nearby stations merely seeking to expand their existing service.

With only 243 days left from June 19 until the DTV conversion, KATV urges the Media Bureau to grant the waiver and act on the underlying maximization application now to avoid any additional delays in the restoration of over-the-air digital service to the Little Rock market. While KATV has restored temporary, over-the-air analog service since the collapse of the tower, its digital operation remains off-the-air. Thus, prompt Commission action is necessary

to ensure that Little Rock viewers do not lose over-the-air television service from KATV when the analog shut down arrives on February 17, 2009.

Background: KATV is authorized to operate in analog on channel 7 and in digital on channel 22. KATV elected to remain on its digital channel 22 after the DTV transition. During tower maintenance in anticipation of the transition to digital, KATV's 2000 foot tower collapsed on January 11, 2008.

Given the topography at its old site and in the Little Rock market in general, KATV's only meaningful alternative to restore over-the-air digital service in time for the analog shut down was to construct a new facility at the Shinall Mountain antenna farm which is located approximately 35 miles from its old site. To secure prompt Commission approval of its plan to restore service in Little Rock, KATV proposed the relocation in two steps.

The first step was a proposal to relocate to the Shinall Mountain site but at a power level that kept its proposed service area entirely within its Appendix B facility. The Commission approved that application on June 12, 2009. *See* FCC File No. BMPCDT-200040AAS. In so doing, the Commission denied an informal objection to the proposed relocation filed by an individual who wanted the Commission to order KATV to rebuild another 2000 foot tower at the same site.¹ Ironically, that same individual has come full circle and now supports KATV's maximization application from Shinall Mountain as well as "any waivers KATV may seek to expedite processing of" the maximization application.²

The underlying application represents the second step of the relocation proposal. Specifically, the application seeks Commission approval of KATV's proposal to maximize its operations at the now approved Shinall Mountain site. This freeze waiver request seeks

¹ *See KATV LLC, Order*, FCC File No. BMPCDT-200040AAS, released June 17, 2008 (Med. Bur.).

² *See* Letter to KATV, LLC from Richard B. Brittain, ¶ 1, dated June 17, 2008 (attached hereto).

Commission action on the instant maximization application before the Commission processes the maximization applications it receives when the freeze is officially lifted on June 20th. KATV submits that there a number of factors that support a grant of the freeze waiver. For convenience, these factors are summarized in bold followed by a supporting explanation.

The tower collapse was entirely outside KATV's control: There can be no question that the tower collapse was entirely outside of KATV's control. No station would voluntarily put itself through the chaos and losses caused by the collapse of a 2000 foot tower. The Commission has regularly waived or relaxed its rules following natural disasters or other events that can neither be anticipated or controlled because it recognizes that the resulting filings by licensees seeking to restore/improve operations are effectively involuntary – that is, these filings seek to improve or remedy a situation that the licensee did not create itself.³ Here, because the underlying maximization filing seeks to remedy an involuntary event that KATV did not cause, the Commission should grant the freeze waiver and process the underlying application that proposed to restore meaningful over-the-air digital service to the market.

The Shinall Mountain site is the only site that could be built by 2/17/09: As described by Allen Finne, KATV's Director of Engineering, KATV conducted an intensive search for a replacement transmitter site after the tower collapse. With the analog shut-down right around the corner, the estimated time to complete construction was of paramount importance in evaluating potential replacement sites.⁴ KATV evaluated the possibility of constructing a replacement tower at its old site.⁵ It also identified all the tall towers within 50 kilometers of its collapsed tower and began reviewing each one for suitability, starting with the

³ See *Waiver of Digital Testing Pursuant to Satellite Home Viewer Extension And Reauthorization Act of 2004*, 23 FCC Rcd. 396, 398 (Med. Bur. 2008)(terrorist attack in 2001 clearly constitutes force majeure and justifies grant of a six-month extension of [a] digital testing waiver”).

⁴ See Declaration of Allen Finne ¶ 4 attached hereto).

⁵ *Id.* ¶ 5.

towers closest to its former site and moving out.⁶ The results of the search effectively narrowed KATV's choices to one:

- * there were no temporary facilities available that would enable KATV to provide effective, over-the-air service to the market;⁷

- * a replacement tower at KATV's old site could not be built by 2/17/09.

As described by Mr. Finne, the terrain in the Little Rock market is relatively flat in the Southeast, where KATV's old site was, and then becomes increasingly mountainous in the northwest portion of Little Rock. With this topography, a station near KATV's old site needed a radiation center above ground of at least 500 meters (1640 feet) and a overall tower height above mean sea level of 600 meters (1960 feet) to overcome the terrain in the northwest portion of the market. The steel needed for a replacement tower this size is rolled by only two mills in North America and both were experiencing production delays due to a large demand from other industries. The steel manufacturing delay was also dependant on the size of the leg steel needed for the replacement tower, with delays ranging from 60-150 if the replacement tower leg steel exceeded 7.5 inches;

- * none of the existing towers in the market were suitable as a permanent transmitter site for KATV. One tower close the KATV's old site was tall enough but was already at windload capacity. Two other towers closer than Shinall Mountain were considered but neither was tall enough to allow KATV to overcome the terrain in the northwest portion of the market.

- * by contrast, a new transmitting facility at the Shinall Mountain antenna farm could be built and operational by the February 17, 2009. Because Shinall Mountain

⁶ *Id.* ¶ 7.

⁷ *Id.* ¶ 3.

itself was approximately 290 meters tall, the tower height needed to serve the market was only 1200 feet. Steel to construct 1200 foot towers is much more commonly available.

In fact, the vendor selected by KATV to construct the tower has the leg steel in inventory, thereby reducing the number of days required to construct the tower.

The results of KATV's search for a replacement site again demonstrate that the Commission should grant the freeze waiver and process the underlying application. KATV's proposal to relocate to the Shinall Mountain site, the action that requires the freeze waiver in the first instance, is clearly driven by factors that KATV cannot control.

First, its 2000 foot tower collapsed. Without the collapse, KATV would not need the instant freeze waiver. Second, the terrain in the Little Rock market requires that stations like KATV build very tall towers if they operate in the area around KATV's former tower site. Third, the DTV transition will end by law on February 17, 2009. The combination of factors two and three effectively make it impossible for KATV to rebuild at its former tower site or relocate to two smaller towers closer to the old transmitter site.

This combination of factors demonstrate that the freeze waiver should be granted. KATV's filing here remedies an involuntary act (the tower collapse) and proposes to operate at the one site it can build-out in time for the analog cut-off. Because KATV cannot control the underlying events or facts that lead to the underlying maximization proposal from the Shinall Mountain site, the Commission should grant the freeze waiver and process the underlying application.

The Shinall Mountain Operation Produces Important Public Interest

Benefits: The maximized facility at the Shinall Mountain site also produces a number of important public interest benefits not available at other sites. First, KATV's maximized

operation will increase the number of homes that receive its digital service. Because Shinall Mountain is the home to a majority of the television stations in the Little Rock market, including the affiliates of the other major networks, most of the over-the-air antennas in the market are pointed toward the Mountain. By relocating to Shinall Mountain, KATV will increase the number of viewers it serves because more viewers will be able to receive a viewable DTV signal from KATV.

Second, KATV's operation from Shinall Mountain will significantly increase the number of viewers with indoor (i.e. set-top) digital reception. Because Shinall Mountain is located closer to the center of Little Rock, KATV's strongest signals (i.e. those closer to the transmitter) will be reach more homes than they did from the former transmitter site.

Third, the proposed maximized operation from Shinall Mountain will continue to provide a minimum 41 dBu signal to all but 594 persons that had received digital service from KATV's former operation.⁸ Cable/satellite penetration in this loss area is approximately 93.9 percent. At the same time, the proposed maximized operation from Shinall Mountain will provide 41 dBu service to 106,439 more people.

Conclusion: Because the underlying maximization application seeks to remedy an involuntary event, KATV urges the Commission to grant the freeze waiver and process the application before processing any maximization in anticipation of the lifting of the freeze on June 20. KATV clearly did not control any of the factors that ultimately resulted in the underlying maximization application: the tower collapse, the topography in and around the Little Rock market, the timing of the tower collapse or the date of the analog shut down. For this reason, the Commission should grant the freeze waiver and allow the maximization application

⁸ See Engineering Exhibit 46 at 6.

to be processed before considering maximization applications from other stations already on the air.

Finally, a simple balancing of the equities here makes plain that a grant of the requested freeze waiver is in the public interest. On one side are the viewers in the entire Little Rock market with no over-the-air ABC digital service, viewers who could lose all over-the-air television service the Commission action on the underlying maximization is delayed by interference conflicts. On the other are the relatively small number of viewers that typically receive new service whenever a station already on the air proposes to maximize its operations. The sheer disparity in the number of people impacted in the two scenarios demonstrates that the Commission should waive the freeze order and process the underlying maximization application now.

Declaration of Allen Finne

1. I am the Director of Engineering at KATV(TV), Little Rock, Arkansas and have served in that capacity since January 2007. I have worked in various technical/engineering jobs in the broadcast industry since 1984, including the Director of Engineering at KLRT-TV, Little Rock, Arkansas from 2001 until March 2006.

2. KATV operates in analog on channel 7 and in digital on channel 22. KATV elected to remain on its digital channel 22 after the DTV transition. The build-out of KATV's digital facility during the transition had been impeded by concerns about the structural integrity of its 2000 foot tower.¹ KATV's original DTV build-out plan was to replace its top-mounted, analog channel 7 antenna with a shared channel 7/22 antenna. KATV was forced to change its DTV build-out plans completely in 2005 when it learned that tower crews could not remove the 36,000 pound, top-mounted channel 7 antenna safely using gin pole techniques until after the transition when the KETS(TV) analog channel 2 antenna, which was mounted immediately below KATV's top-mounted analog antenna, could also be removed.

3. KATV's modified build-out plan developed in 2005 involved the construction of a significant DTV STA facility with a side-mounted antenna that would be operated until after the transition when the KATV and KETS analog antennas were removed. Once the analog antennas were removed, KATV's digital antenna would be relocated to the top of the tower. KATV's STA facilities, which included a side-mounted digital antenna at 574 meters (1883 feet) and a transmission facility capable of producing an ERP of 750 kW, were built and went on-the-

¹ The height of KATV's tower itself is approximately 1859 feet. With KATV's top-mounted analog antenna, the overall height of the tower was approximately 2000 feet.

air on or around October 2006. *See* FCC File No. BDSTA-20060817ADZ. This digital STA facility was operating until KATV's tower collapsed.

4. Following the collapse of KATV's 2000 foot tower in January 2008, I was one of the individuals responsible for, among other things, locating a long-term replacement transmitter site for KATV. With the analog shut-down deadline of February 17, 2009, right around the corner, the estimated time to complete construction was of paramount importance when we evaluated replacement transmitter sites. KATV's digital operation was off-the-air and there were no temporary facilities available that would enable KATV to provide effective, over-the-air service to the market. Thus, KATV needed to locate a replacement site quickly and then move expeditiously to construct a replacement DTV facility on or before February 17, 2009, to ensure that the Little Rock market continued to have over-the-air access to ABC network programming.

5. One of the options we considered was the construction of a replacement tower at or around KATV's existing site with the collapsed tower. The required size of the tower and the looming analog shut-down deadline prevented KATV from selecting this option. To meet KATV's coverage requirements for the City of Little Rock and the surrounding market from the existing site in Redfield, the station needed a center of radiation above ground of more than 500 meters and an overall tower height above mean sea level ("AMSL") of more than 600 meters.² This height is required to overcome the more mountainous terrain in the northwest portion of the Little Rock market. Because the average terrain in and around Redfield is approximately 80 meters lower than the terrain in the northwest, the station would need to operate from a very tall tower to provide the requisite signal strength to Little Rock and the rest of the market.

² By point of reference, the radiation center above ground for KATV's now-collapsed tower was 515 meters; the height of the tower above mean sea level ("AMSL") was approximately 677 meters.

6. We were advised by representatives of several tower companies that the steel size needed for the legs of a replacement tower at or near the Redfield site was not readily available due to material delay and manufacturing constraints. We learned that only two mills in North America roll this size steel and that both of these mills were experiencing a large demand for steel fabrication primarily due to needs imposed by deep water oil exploration platforms. The tower companies indicated that, depending on whether the required leg steel exceeded 7.5 inches in diameter, manufacturing the legs needed for a replacement tower at or near the Redfield site would add an extra delay ranging from 60-150 days on top of the 45-60 days that is normally needed for manufacture of leg steel. These additional manufacturing delays pushed the timeline for the construction of the replacement tower and then maximized digital facilities well past the February 17, 2009 analog shut down.

7. Following the tower collapse, we also investigated the availability of space on existing towers within 50 kilometers of the collapsed KATV tower. There are several towers located within this radius that were considered as possible locations for KATV-DT. The results of our investigation were as follows:

- a. The first is owned by Newport Television with a structure height of 578.8 meters/AMSL 681.8 meters. See ASR #1036554. This structure is located approximately 2.3 miles to the southwest from KATV's collapsed tower and currently supports KASN and KASN-DT, KOLL-FM, KETS-DT. It is also the temporary facility for KETS(TV). (The analog operations of KETS(TV) were also destroyed when KATV's tower collapsed.) Newport Television has indicated


there is no space available suitable for KATV-DT on the structure presently or after transition.

- b. The second is owned by Agape Church, Inc. with a structure height of 365.8 meters/AMSL 434.1 meters. See ASR #1055367. This structure is located approximately 9.9 miles to the northeast from KATV's collapsed tower and currently supports KVTN and KVTN-DT. Both the structure height and the AMSL for this structure are not sufficient for KATV's needs and would result in a significant loss of coverage for KATV-DT, including the likely loss of required signal strength to Little Rock.
- c. The third is owned by American Tower with a structure height of 282.2 meters/AMSL 405.9 meters. See ASR # 1037856. This structure is located approximately 7.4 miles southeast from KATV's collapsed tower. Both the structure height and the AMSL are also not sufficient for KATV's needs and would again result in a significant loss of coverage for KATV-DT.
- d. There are several towers of suitable height on Shinall Mountain inside the 50 kilometer radius but all are fully loaded both now and after transition.

8. The site ultimately selected for KATV's replacement tower is on Shinall Mountain. Among other things, this site is free of the drawbacks we encountered with the other towers. Because Shinall Mountain has a height of approximately 290 meters, the tower height needed to serve the market is only 1200 feet (365.6 meters). Because the tower height is lower, the steel size required for the tower legs was smaller and more readily available. In fact, the vendor ultimately selected by KATV to construct the tower already has the leg steel for a 1200 foot (365.6 meters) tower in inventory, thereby shaving a significant number of days from the

complete construction of the tower. In addition, the Shinall Mountain site provides excellent coverage of the Little Rock market. A maximized KATV digital facility operating from the Shinall Mountain site substantially increases the number of homes likely to have indoor (i.e. set-top) over-the-air digital reception and provides City of License digital signal strength to the area around the KATV's former transmitter site in Redfield and the surrounding area in the southeastern part of the market. The combination of an accelerated tower construction schedule and excellent coverage of the Little Rock market clearly made the Shinall Mountain the best transmitter site available to KATV.

I, Allen Finne, hereby declare under penalty of perjury the foregoing Declaration is true and correct to the best of my knowledge, information and belief:



Dated: 6/18/08

Richard B. Brittain

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June 17, 2008

KATV, LLC
401 Main Street
Little Rock, AR 72201
(by hand delivery)

Gentlemen:

I am writing to express my support for the maximization application you indicated you would file with the FCC for your new digital transmitter site at Shinall Mountain under File No. BMPCDT-20080408AAS, which I opposed but the FCC granted on June 12. (Though my opposition also included File No. BEPCDT-20080508ACB, the FCC didn't treat it as such. Since the FCC apparently did consider my opposition to the main application, I will not pursue further action on either application.) I also support any waivers KATV may seek to expedite processing of that application. You may file this letter with the FCC as part of your application.

My main reason for opposing the applications was to remind you and the FCC of the public-interest considerations that forced KATV to build its tower near my hometown of Redfield back in the 1960's. Since the FCC apparently believes that relocation to Shinall Mountain now outweighs those considerations, however, the main issue today is for KATV to return to full digital broadcasting as soon as possible, especially since the freeze which limited the previous application to 4.95 kW has been lifted.

Though it is not the solution I would have preferred, increasing KATV-DT's power to 1 MW (greater than its Redfield power of 750 kW) will help offset the impact to Southeast & East Arkansas, including Pine Bluff (and to a lesser extent, Redfield), of its relocation to Shinall Mountain. It will also advance the DTV transition by expediting KATV-DT's return to full power, especially if KATV chooses to vacate its analog frequency early. (Since it's obvious KATV will never go back to full-power analog and KETS-DT needs Channel 7, an early analog shut-off would be appropriate once digital is fully restored.)

Sincerely,

A handwritten signature in black ink, appearing to read "Richard B. Brittain", with a stylized flourish at the end.

Richard B. Brittain