Waiver Request

ABC Holding Company Inc., licensee of KABC-TV and permittee of KABC-DT, Los Angeles, California ("KABC"), files the instant application to further maximize KABC's post-transition DTV facilities. In connection therewith, KABC requests a waiver of Section 73.622(f)(5) of the rules of the Federal Communications Commission ("FCC" or "Commission"). As described more fully in the attached Engineering Exhibit, KABC operates its current analog facilities on channel 7 and its pre-transition digital television ("DTV") facilities on channel 53. On April 17, 2008, the FCC granted DTV a construction permit to operate KABC's post-transition DTV facilities on channel 7 with its presently licensed channel 7 NTSC antenna (newly assigned Antenna ID 88014).[1] KABC presently holds a construction permit for post-transition maximized DTV facilities on channel 7 with an effective radiated power ("ERP") of 25.0 KW.[2] This application seeks FCC authorization for KABC to increase the ERP of its post-transition DTV facilities to 28.7 KW. Section 73.622(f)(5) of the Commission's rules permits stations to increase their ERP in excess of the DTV allotment "up to that needed to provide the same geographic coverage area as the largest station within their market."[3] KABC proposes a slight increase in power beyond that needed to provide the same geographic coverage area as the largest station within its market, and thus requests a waiver of Section 73.622(f)(5).[4]

The Commission grants rule waivers for good cause where special circumstances exist and where the waiver will serve the public interest.[5] Grant of the waiver to KABC is in the public interest for several reasons. First, FCC approval of the proposed modification application will enable KABC to increase the strength of its signal within KABC's existing analog service area and following the DTV transition will minimize the loss of ABC programming to existing viewers who rely on over-the-air reception from digital receivers with indoor antennas to receive KABC's digital signal. The technical parameters for maximum ERP and antenna height above average terrain ("HAAT") established by the FCC when it created the initial DTV Allotment Table were intended to replicate a television station's existing analog service area.[6] It is well documented, however, that the Commission's maximum ERP levels are insufficient to reach

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[1] *See* Engineering Statement at p. 1; *see also* FCC File No. BPCDT-20080326AJJ (granted Apr. 17, 2008).
[2] *See* Engineering Statement at p. 1 and p. 6; *see also* FCC File No. BMPCDT-20080626AAL (granted Dec. 9, 2008).
[3] 47 C.F.R. § 73.622(f)(5).
[4] *Id.*
[5] *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir 1969)); *see also* 47 C.F.R. § 1.3 (stating that rule provisions may be waived "for good cause shown").
[6] *In the Matter of Advanced Television Systems and Their Impact on Existing Television Broadcast Service,* Sixth Report and Order, 12 FCC Rcd 14588*, FCC 97-115,* ¶ 29 ("Sixth Report"). Establishing an initial Allotment Table that would enable replication was intended to "ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air."

certain analog viewers who rely on indoor antennas for reception of digital television service.[7] Indeed, the collective experiences from stations' that have completed the DTV transition, as well as DTV field tests, demonstrate that the digital signal is not always of sufficient strength for reception by viewers who rely on indoor antennas for reception of their digital television service.[8] In fact, reception problems ranked high among consumer complaints to the FCC's DTV Call Centers in feedback following the conversion from analog to DTV broadcasting by many television stations in February.[9] This digital off-air television reception concern is exacerbated in urban areas such as in KABC's viewing area in Los Angeles because of the greater reliance by viewers in urban areas on indoor antennas to receive over-the-air television signals.[10] In addition, the FCC uses different signal levels for analog and digital transmissions to define "reception". As a result, a viewer who receives a viewable analog signal from a station may not be able to receive a viewable digital signal even though the required signal strength of the digital transmission meets the FCC's definition of "reception". For all of the above reasons, KABC proposes increasing its ERP slightly to 28.7 KW in order to provide a stronger signal to its viewers in the Los Angeles metropolitan area. A grant will increase the ability of KABC's existing viewers to receive KABC's digital signal and, therefore, a grant of the modification will serve the public interest.

Second, the public interest will further be served by grant of the waiver request and modification application because the proposed operation at 28.7 kW will enable KABC to serve 83,474 more persons than presently will be served by the facilities authorized by the outstanding KABC construction permit for 25 kW (FCC File No. BMPCDT-20080626AAL). Thus, KABC will serve a population of 15,922,369 persons with its proposed 28.7 kW operation, as compared to 15,838,895 persons with the outstanding construction permit. Similarly, the proposed modification will enable KABC to provide service to 2,498 additional square kilometers than will be presently served by the 25 kW operation. Specifically, the outstanding post-transition construction permit produces a calculated coverage area of 51,713 square kilometers whereas the 28.7 kW facility will serve a coverage area of 54,211 square kilometers. Thus, not only will the power increase provide over-the-air service to existing KABC viewers who otherwise would not be able to receive KABC's digital signal post-transition but will provide digital television service

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[7] *See* Harry C. Martin, *DTV Surprise: Moving to your analog channel? Avoid Coverage Loss*, Broadcast Engineering, September 1, 2007, http://broadcastengineering.com/hdtv/dtv_surprise_moving_analog_channels/.

[8] *See* Dave Lieber, *The Watchdog: In digital TV conversion, sometimes getting a converter box isn't enough,* Star-Telegram, March 23, 2009, http://www.star-telegram.com/news/story/1272744.html; *see* Troy Wolverton, *Digital TV conversion troubles not over yet,* Mercury News, March 16, 2009, http://www.mercurynews.com/businessheadlines/ci_11900956; *see also* Commission Jonathan S. Adelstein Second En Banc Hearing on the Digital Television Transition, March 5, 2009.

[9] *See* Initial Phase of DTV Transition Encouraging *Large Challenges Remain,* FCC Press Release, February 19, 2009.

[10] *See* John Brinkley, *Broadcaster Seeks Change in Digital TV Format,* The New York Times, July 12, 1999, http://www.nytimes.com/1999/07/12/business/broadcaster-seeks-change-in-digital-tv-format.html?sec=&spon=&pagewanted=2. In recognition of the disparity in reception capabilities between indoor and outdoor antenna, the Commission now requires stations to include information about antennas when broadcasting station viewer notifications. *In the Matter of Implementation of the DTV Delay Act*, Third Report and Order and Order on Reconsideration, FCC 09-19, ¶¶49-50 (rel Mar. 13, 2009).

post-transition to these 83,474 persons not presently within KABC's post-transition DTV coverage area.

Finally, and importantly, the proposed modification can be accomplished without causing any impermissible interference to other affected stations. It is well established that "stations should be able to maximize their facilities provided that no new interference is caused to other stations."[11] In particular, Section 73.622(f)(5) of the Commission's rules requires applicants requesting an increase in ERP to demonstrate that the increase will not result in new interference exceeding the de minimis standard set forth in Section 73.623(c).[12] Accordingly, as demonstrated in the attached Engineering Exhibit, the proposed increase in ERP will not result in impermissible interference to affected stations.[13] Thus, KABC satisfies the Section 73.622(f)(5) non-interference requirement for maximization applications. In addition, with the exception of the coverage area limit described in Section 73.622(f)(5), this application fully meets all applicable rules and polices the Commission has applied in processing DTV applications.

Based on the foregoing, for good course shown, KABC urges the Commission to grant KABC's waiver request. The public interest will be served because a grant will increase the population able to receive KABC's digital service over-the-air and will be consistent with the Commission's mission to better enable KABC's current viewers to receive KABC's programming when KABC completes the DTV transition.

[11] Sixth Report, 12 FCC Rcd 14588, ¶ 31.
[12] 48 C.F.R. § 73.623(c).
[13] *See* Engineering Statement, at p.4 and pgs. 6-8.