

Request for Waiver of Uncodified Policy Regarding
Modification of 2000 Window Construction Permits

Venture Technologies Group, LLC (“VTG”) hereby amends the subject application for modification of the construction permit for low power television station K55JW, Banning, California, to request a waiver (to the extent necessary) of an uncodified policy apparently being applied by Commission staff with respect to applications to modify construction permits originally applied for in the 2000 LPTV filing window. The policy at issue appears to prohibit modifications of 2000 window construction permits that would locate the proposed site within 121 km from the reference coordinates of major cities. As discussed below, VTG believes this policy to be invalid as a matter of law, but nonetheless requests a waiver of the policy, to the extent required, on public interest grounds in connection with this application.

VTG’s initial application for the K55JW construction permit was filed in response to the Commission’s *Public Notice, Scheduling of Limited Low Power/Television Translator/Class A Television Auction Filing Window from July 31 Through August 4, 2000*, 15 FCC Rcd 10854 (2000) (the “2000 Window Notice”). That public notice restricted the filing of applications for new LPTV construction permits within 121 kilometers from the reference coordinates of certain specified major cities, on the ground that such geographic restrictions were necessary due to the Commission’s implementation of DTV service and by the large number of LPTV stations already authorized in and around those cities.

Neither the *2000 Window Notice* nor any Commission regulation, however, contains a similar geographic limitation on subsequent modifications of construction permits filed for in the 2000 window and granted. Until the summer of 2004, consistent with its regulations, the Commission granted modifications of many construction permits issued as a result of the 2000 window that would locate the proposed transmitter site within 121 km of the reference coordinates of major cities. Based on actions since the summer of 2004, however, it is apparent that the staff has now reversed course and is following an unwritten policy of applying the *2000 Window Notice*’s geographic restrictions to subsequent construction permit modifications, thus dismissing or refusing to process applications that seek to modify 2000 window construction permits to propose a transmitter site within a 121 km zone.¹ The staff is apparently applying such a policy despite having given no legal notice of the policy whatsoever in advance of its implementation—let alone solicited public comment thereon—and despite the lack of any such provision in Commission rules or the *2000 Window Notice*.

¹ See, e.g., Letter to Venture Technologies Group, LLC, *et al.*, from Hossein Hashemzadeh, Associate Chief, Video Division, in File No. BMP TTL-20040521AHT (K45IC, Banning, CA) (Dec. 2, 2004).

For the above reasons, VTG believes the staff's uncodified and unannounced policy with respect to the processing of applications to modify 2000 window construction permits is invalid as a matter of law, and therefore that the instant application is immediately grantable. Nonetheless, to the extent the staff's implementation of this policy has delayed processing of this application, VTG requests a waiver of the policy to allow the application's expeditious grant. As discussed below, the public interest warrants such a waiver with respect to the facilities proposed here.

The existing K55JW construction permit (File No. BMPTTL-20040326AKT) authorizes a transmitter site that is more than 121 km from Los Angeles, California. While the instant application proposes a transmitter site within 121 km (specifically, 89 km) from Los Angeles, as shown elsewhere in the application, the 74 dBu contour of the proposed K55JW facility is entirely contained within the 74 dBu contour of the station's existing construction permit. In fact, the proposed facility represents a substantial reduction in the station's coverage of the 121 km zone around Los Angeles from the station's authorized coverage. See Exhibit 6, Attachment A. Given that the purpose of the Commission's geographical restriction is to preserve spectrum for DTV implementation and avoid overcrowding of LPTV stations around major metropolitan areas, the facility here actually furthers, not hinders, the public interest objectives of the geographical restriction. Although it proposes a transmitter site within 121 km of Los Angeles, by reducing K55JW's authorized coverage this application frees more spectrum in the restricted area for use by other television broadcasters. It is also worth noting that K55JW will operate on Channel 55, a non-core channel that will not be available for DTV use after the transition. Thus, the proposal's effect on future DTV operations is nonexistent.

Additionally, this application proposes to relocate K55JW to the same transmitter site currently being used by noncommercial station KVCR, San Bernardino, California. The Commission has recognized the public interest benefits of site collocation, particularly during the DTV conversion.² The net reduction in transmitter sites resulting from this proposal is another public interest justification for waiving the staff's policy.

Finally, the modification proposed here represents a much more efficient use of spectrum than the authorized K55JW construction permit. While reducing K55JW's coverage (and not extending the authorized contour in any direction), thus freeing more spectrum for other use, the reduction in service area will affect mainly sparsely populated areas while not affecting the station's availability to the minority populations the station is expected to target in its programming. While 52% of the station's authorized coverage area is composed of African Americans, Hispanics, Asians and Pacific Islanders, that percentage would increase to 59% by virtue of the proposed modification.³ Thus, the modification will allow K55JW to serve its target audiences in a more spectrally efficient manner.

For all these reasons, VTG respectfully requests that the staff waive its uncodified geographic restriction on modifications of 2000 window construction permits and expeditiously grant the instant application.

² See, e.g., KNTV License Inc., DA 04-2523, at 7 (August 12, 2004).

³ Source: 2000 U.S. Census.