

ABC, Inc., licensee of WPVI(TV) and permittee of WPVI-DT, Philadelphia, Pennsylvania (“WPVI”), respectfully requests a waiver of the current freeze on the filing of DTV maximization applications (“Filing Freeze”) and grant of the instant application (“Application”).¹ The facilities proposed in the Application (“Proposed Facilities”) will extend beyond the facilities specified in Appendix B of the post-transition DTV Table, primarily due to the differences between WPVI’s actual antenna pattern and the theoretical and unachievable antenna pattern for WPVI specified in Appendix B.² In this case, a waiver of the Filing Freeze is warranted because, as demonstrated below, the instant request satisfies every element of the Commission’s Filing Freeze waiver standard. Additionally, grant of the waiver is in the public interest because it will permit WPVI to replicate its existing analog contour and serve its existing analog viewers with a DTV signal. Accordingly, the Commission promptly should grant the Application and waiver request.

Filing Freeze Waiver Standard. The Filing Freeze presently prohibits parties from filing, *inter alia*, any application that would extend a station’s DTV contour beyond the station’s parameters in (i) the DTV Table of Allotments, (ii) existing Commission authorizations and (iii) applications on file with the Commission prior to release of the *Filing Freeze PN*.³ In its recent *Third Periodic Review Order*, the Commission announced a new Filing Freeze waiver policy intended to allow the filing of, and FCC grant of, applications to extend a station’s DTV contour under certain circumstances. Specifically, under the recently-adopted policy, the FCC generally will issue a waiver if the station’s proposed expansion: (i) would allow the station to use its analog antenna or a new antenna to avoid a significant reduction in post-transition service from its analog service area, (ii) would be no more than five miles larger in any direction than the station’s authorized service area, as defined by Appendix B, and (iii) would not cause impermissible interference, *i.e.*, more than 0.5 percent new interference, to other stations.⁴ The waiver policy is intended to “permit rapid approval of minor expansion applications filed by stations that are not using their pre-transition DTV channel for post-transition operation” and to provide “added flexibility for stations that wish to use their existing analog channel antenna.” In doing so, the Commission intended to assist stations that would suffer significant service losses

¹ See Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes, *Public Notice*, 19 FCC Rcd 14810, 14810-11 (MB 2004) (“*Filing Freeze PN*”). WPVI-DT filed a license to cover application for its DTV facilities in 1998, which remains pending. See FCC File No. BLCDT-19980422KE.

² As set forth in further detail in the petition for reconsideration filed by The Walt Disney Company, on behalf of WPVI, in MB Docket No. 87-268 (filed Oct. 26, 2007), in order to use its NTSC antenna for post-transition DTV operation and remain within the antenna pattern specified in Appendix B, WPVI would have to reduce its overall ERP which, in turn, would prevent WPVI from replicating its analog contour. In contrast, the Proposed Facilities will enable WPVI to fully replicate WPVI’s analog contour. Because grant of the Application would moot the petition for reconsideration, Disney plans to withdraw or request dismissal of the petition upon grant of the instant waiver request and Application.

³ *Id.*

⁴ Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees, *Report and Order*, FCC 07-70, MB Docket No. 07-91, ¶151 (rel. Dec. 31, 2008) (“*Third Periodic Review Order*”).

because the “unbuildable, theoretical pattern” in Appendix B does not match the station’s analog antenna pattern.⁵

The Proposed Facilities Satisfy Every Element of the Waiver Standard. As further described in the attached engineering statement, the Proposed Facilities satisfy every element of the Filing Freeze waiver standard described above. First, WPVI proposes to use its existing analog antenna. Use of this antenna, with its associated antenna pattern, would permit WPVI to fully replicate with an ERP of 7.65 kW at 332 meters HAAT.⁶ In contrast, the antenna pattern currently specified in Appendix B would require WPVI to reduce its post-transition ERP to less than 5 kW, resulting in a significant coverage loss of 575,335 persons.⁷ Thus, because grant of the waiver request would permit WPVI to avoid a significant reduction in coverage, this request satisfies element one of the Filing Freeze waiver standard.⁸ Further, the relevant contour of the Proposed Facilities would extend, at most, only 2.6 miles from the facilities specified in Appendix B.⁹ Because this extension is no more than five miles, the second element of the Filing Freeze waiver standard also is satisfied. Finally, the Proposed Facilities satisfy the third element of the waiver standard because they would cause less than 0.5 percent new interference to the only two stations potentially affected.¹⁰

For the reasons stated herein, ABC respectfully requests that the Commission grant the Application and associated waiver request so that WPVI may serve its existing analog viewers with a DTV signal.

⁵ *Third Periodic Review Order*, ¶152

⁶ Engineering Statement at 3; FCC Form 301, Sec. III-D, DTV Engineering.

⁷ Engineering Statement at 3, 4.

⁸ Engineering Statement at 4, Exhibit 4.

⁹ Engineering Statement at 4-5, Exhibit 1, Exhibit 2. The maximum extension is 2.6 miles in the 270 degree direction, where there is no other station to protect.

¹⁰ Engineering Statement at 5, Exhibit 4 (calculating 0.2 % interference to WRGB, Schenectady, NY and 0.5% to WEDY, New Haven, CT).