

Exhibit 1

Waiver of Section 73.3598(a)

It is respectfully requested that the Commission waive Section 73.3598(a) of the FCC's rules to permit Jose Antonio Aguilar, a minority, to acquire the instant station permit and receive an extended construction period. Both Jose Antonio Aguilar and the permit qualify under the Commission's "eligible entity" policy since the permit has less than 18 months remaining and Aguilar qualifies economically as an eligible entity under the FCC's rules and procedures. However, only recently, a Court has concluded that the Commission's "eligible entity" policy was "arbitrary and capricious" because it failed to achieve the "goal of...increasing broadcast ownership by minorities..."¹

As noted, Jose Antonio Aguilar is a minority. Therefore, in the event the FCC fails to grant Aguilar eligible entity status and extend the expiration date of the permit being assigned to him, the Commission must grant Aguilar a waiver of Section 73598 of the Commission's rules and extend the permit construction period. The Court's disapproval of the Commission's eligible entity policy was based on the FCC's failure to "advance broadcast ownership by minorities."² It would, therefore, be inequitable in the extreme to Aguilar and similarly situated minorities if the Commission were to deny Aguilar additional time to construct a station that he will own and operate as a minority because the FCC chose to narrowly follow a Court decision directing the FCC to advance minority ownership. In this case, granting Aguilar a waiver of the construction period rule will follow the Court's order and directly increase minority ownership and operation of broadcast stations.

¹ *Prometheus Radio Project v. FCC*, Case 08.3078 (3rd Cir., released July 7, 2011), pp. 50-51, 52.

² *Id.*, p. 54.

It has long been held that “a general rule, deemed valid because its overall objectives are in the public interest, may not be in the public interest if extended to an applicant who proposes a new service that will not undermine the policy served by the rule.”³ Moreover, “a rule is more likely to be undercut if it does not in some way take into account considerations of hardship, equity or more effective implementation of overall policy, considerations that an agency cannot realistically ignore.”⁴

In this case, waiving Section 73.3598(a) of the Commission’s rules with respect to Aguilar will not undermine the policy served by the construction period rule. Here, Aguilar qualifies as an eligible entity under that FCC policy; however, a Court has remanded that policy back to the Commission because the policy did not appear to achieve the goal of satisfactorily advancing minority ownership and operation of broadcast stations. Thus, Aguilar would have received a construction extension of 18 months from the date of consummation of his acquisition of the station permit were it not for the Court’s desire to see the Commission take real action to increase minority ownership and operation of broadcast stations. Were the FCC now to deny Aguilar, a minority, additional time to construct and operate his broadcast station in a misplaced effort to follow the Court directive to increase minority ownership and operation of broadcast stations, it would not just be a contradictory result, but would stand the public interest on its head.

On the other hand, a waiver of the rule here would recognize Aguilar’s equitable rights. Waiving the construction period rule in this case would not lead to an evisceration of that rule since this is a highly unusual instance and the situation will only exist temporarily until the FCC takes final action to modify its approach, consistent with the Court directive, to advance minority

³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁴ *Id.*

ownership and operation of broadcast facilities. In sum, the public interest would be served in this case by the Commission's waiving Section 73.3598(a) of its rules with respect to Aguilar's assignment application.

In the event the Commission determines that it will not grant Jose Antonio Aguilar a waiver of Section 73.3598(a) of the rules, Aguilar requests that the period of construction on the permit be tolled under Section 73.3598(b) of the rules. First, it is noted that the decision remanding the "eligible entity" policy back to the FCC is not yet final. Additionally, it is unknown at this time when the Commission will arrive at a decision modifying its approach toward advancing minority ownership. In the meantime, the Court retains jurisdiction over the remanded issue.⁵ Therefore, the matter fits within Section 73.3598(b)(2) of the FCC's rules in that construction and operation of the station is subject to administrative and judicial review.

In sum, in the event that the Commission does not grant Jose Antonio Aguilar an extension of time to construct the permit in his position as an eligible entity, he respectfully requests that the Commission grant him a waiver of Section 73.3598(a) of the FCC's rules for 18 months from the consummation of his acquisition of the construction permit. Alternatively, Jose Aguilar requests that the Commission toll the permit expiration date until the FCC arrives at a policy to advance minority ownership of broadcast stations.

⁵ *Prometheus Radio Project*, p. 54.