

Exhibit 12 - Attachment A

REQUEST FOR WAIVER OF SECTION 74.1233(a)(1)

Since this application does not qualify as a minor change under Section 74.1233(a)(1) of the Commission's rules requiring that the 60 dBu contours of W276BV's existing and proposed facilities overlap, the applicant respectfully requests waiver of Section 74.1233(a)(1) in accordance with the factors set forth by the Media Bureau in connection with an identical waiver granted to The Cromwell Group, Inc. with respect to W263AQ, Mattoon, IL, in FCC File No. BPFT-20101025ABR. (the "Mattoon Waiver")¹, and other facilities since.

In accordance with Section 1.3 of the Commission's Rules, "[a] waiver is appropriate when special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). As with the recently granted Mattoon Waiver, the applicant submits that such special circumstances are similarly present here. The Media Bureau found that the Mattoon Waiver was in the public interest because (1) the licensee did not have a history of filing serial minor modification applications; (2) the proposed site was mutually exclusive to the licensed facility; (3) the proposed move did not implicate the concerns raised by the Commission in the low-power FM proceeding²; and (4) the FM translator would be rebroadcasting an AM station.

First, in the instant case, the licensee/applicant has never moved the licensed facility.

Second, the instant application proposes facilities that are mutually exclusive with W276BV's licensed facilities. That is, W276BV's licensed 60 dBu F(50,50) primary service area lies within the proposed 40 dBu F(50,10) interference area. Please see Figure 2 of the Technical Statement in Exhibit 12 of this application. As noted in the Mattoon Waiver, the translator modification rule is more restrictive than the general full-power minor change rule such that

¹ See Letter to John F. Garziglia, Esq., In re: W263AQ, Mattoon, IL., DA 11-1495, September 2, 2011.

² *In the Matter of Creation of A Low Power Radio Service, and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Third Further Notice of Proposed Rule Making, FCC 11-105, July 12, 2011 ("Third Further Notice").

the instant proposal would be a minor modification if the facilities were full service FM facilities processed under Part 73 of the Commission's Rules. Accordingly, as a practical matter, such mutual exclusivity alleviates any *Ashbacker* concerns.

Third, prior to the recent LPFM filing window, and under current LPFM rules, no LP100 or LP10 facility could meet the spacing requirements of Section 73.807 anywhere within the interfering contour of the proposed facility. Therefore, no LPFM facility would ever be precluded under current rules by grant of this application.

Fourth, the instant application proposes that W276BV rebroadcast the AM signal of Radio Station WVOX(AM) at New Rochelle, NY. As recognized by the Media Bureau, the Commission's deregulatory measure to permit the use of certain FM translators to rebroadcast the signal of local AM stations has been an "unqualified success." As such, the proposed use with WVOX (AM) is permissible and consistent with the Commission's efforts to revitalize the AM service and make the most efficient use of limited spectrum.

For the foregoing reasons, the applicant respectfully submits that the instant request satisfies the Commission's waiver standard and is consistent with the factors in the Mattoon Waiver. Based on the four Mattoon Waiver factors, the instant application presents special circumstances that warrant deviation from 74.1233(a)(1), and such deviation will serve the public interest by permitting W276BV to provide improved service to the public.

Accordingly, the applicant hereby respectfully requests that the Commission waive Section 74.1233(a)(1) and permit the instant application to be processed as a minor change application.