

**Caballero Acquisition LLC (“Caballero”)
Call Sign E191094
Request for Limited Waiver of C-Band Earth Station Freeze**

Per FCC Rules 25.117 and 1.3, Caballero files this modification application and limited waiver request to request permission to update the registration of its incumbent receive-only C-band antennas under Call Sign E191094 (the “Incumbent Antenna”) used in conjunction with broadcast television station KGMM-CD, which was relocated as part of the station’s broadcast incentive auction re-pack.¹

The instant application seeks limited waiver of Section 25.138(a) of the Commission’s rules, declining applications for new and modified C-band earth station applications within the contiguous United States.² Under FCC Rule 1.3, the agency may grant a waiver for good cause shown.³ The Commission typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest.⁴ In granting a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵ Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.

For several reasons, good cause exists for waiver of the bar on C-band modifications. For one, the relocated earth station represents a minor change to the current landscape of authorized C-Band operations. The Commission recently granted specific requests of broadcasters to update their C-band registrations that had been relocated as a result of the broadcast incentive auction re-packing.⁶ The relocation to another site was made “to avoid prolonged periods off the air while repacking changes are made.” This modification is also “well in advance of the C-band auction and can be considered by bidders.”⁷ Thus, good cause for waiver exists as the instant

¹ See LMS File No. 0000036142 (granted Feb. 21, 2018).

² 47 C.F.R. § 25.138(a); *Temporary Freeze on Applications for New or Modified Fixed Satellite Service Earth Stations and Fixed Microwave Stations in the 3.7-4.2 GHz Band*, Public Notice, DA 18-398, at 1 (rel. Apr. 19, 2018) (“*April 2018 Freeze PN*”).

³ 47 C.F.R. § 1.3.

⁴ *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

⁵ *WAIT Radio v. FCC*, 419 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁶ *International Bureau Releases List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, Public Notice, DA 20-823, at 5 (rel. Aug. 3, 2020) (“*Incumbent Earth Station PN*”); see also Comments of Gray Television, Inc. et al., GN Docket Nos. 18-122 and 17-183, at 6 (filed Oct. 29, 2018) (noting that broadcasters may need to move or replace earth stations as a result of the re-pack but cannot do so while the registration freeze remains in place).

⁷ *Incumbent Earth Station PN* at 5.

application seeks to update the registration for the Incumbent Antenna for an intra-city move as part of its broadcast re-packing which has occurred in advance of the C-band auction.

Moreover, as an intra-city move that facilitates the Commission's broadcast incentive auction re-pack, the proposed modification is limited in scope. Thus, any potential impacts on the C-band environment will be no more than *de minimis* and grant of this waiver will not undermine the objectives of Section 25.138.⁸

Accordingly, grant of the instant application, including retention of incumbent status, will serve the public interest by allowing Caballero to ensure the continuity and quality of KGMM-CD broadcasts to its local viewers. Authorizing the relocation will enable Caballero to perform necessary facility migration without causing any service interruptions to customers and minimal alteration to the current landscape of authorized C-band operations, pursuant to the Commission's *C-Band Order*.⁹

Caballero requests limited waiver of Section 25.138 of the Commission's rules to accomplish a minor, intra-city move and modify its registered, incumbent C-band earth stations. For the reasons above, grant would serve the public interest.

⁸ *Alaska Communications Internet LLC Request for Waiver of Temporary Freeze on Applications for New or Modified Fixed Satellite Service Earth Stations in the 3.7-4.2 GHz Band*, Order, DA 19-726, ¶ 6 (rel. Aug. 1, 2019); 47 C.F.R. § 25.138(a).

⁹ See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 85 Fed. Reg. 22804, at ¶¶ 116-117 (Apr. 23, 2020) ("*C-Band Order*").