

REQUEST FOR WAIVER OF FILING FREEZE ON NEW FIXED SATELLITE SERVICE EARTH STATIONS

KJLA, LLC (“KJLA”), the licensee of Station KJLA(TV), four low-power television stations, and associated telecommunications facilities, including unregistered or licensed fixed satellite service earth stations, hereby requests a waiver of the current freeze on the submission of applications for the registration or licensing of such earth stations and to be treated as if it had filed within the window for such submissions.¹ In support of the waiver requested, KJLA states as follows.

Pursuant to Section 1.3 of the Commission’s Rules, the Commission may grant a waiver for good cause shown. A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Tel. Co. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990). The relevant bases in acting upon a waiver request are hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418. F. 2d 1155 (D.C. Cir 1969), cert. denied, 409 U.S. 1027 (1972). A waiver will be granted where the proponent meets this high hurdle and evidences that the public interest will be served.

The Commission, in the Freeze Public Notice (at p. 3), recognized that waivers might be requested and announced that: “The Bureau will consider requests for waiver of this freeze on a case-by-case basis and upon a demonstration that waiver will serve the public interest and not undermine the objective of the freeze.” KJLA submits that its request will serve the public

¹ The freeze, along with a filing window, was implemented in *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*, DA 18-398, released April 19, 2018 (“Freeze Public Notice”), and extended in *International Bureau Announces 90-Day Extension of Filing Window, to October 17, 2018, to File Applications for Earth Stations Currently Operating in 3.7-4.2 GHz Band; Filing Options for Operators with Multiple Earth Station Antennas*, DA 18-639, released June 21, 2018.

interest, will not harm the objectives of the freeze in any regard, and, therefore, meets this standard.

Initially, KJLA wishes to make note that it is one of the few minority (Latino) owned and controlled full-service television broadcasters in general, and in a major market (Los Angeles), in particular, and operates a single full-service television station and associated low-power television stations, most of which rebroadcast its signal, in the Los Angeles and Santa Barbara DMAs. As a television broadcaster, KJLA is dependent on satellite-delivered programming and utilizes earth stations, in the 3.7-4.2 GHz band. In the past, these earth stations were not required to be registered nor licensed and KJLA did not do so.

KJLA recognizes that it did not seek to register or license its earth stations during the 2018 window. Given its small size, KJLA does not possess the managerial or engineering resources of its many competitors that own and operate fleets of stations and employ large engineering staffs. These limitations have impacted on KJLA as it deals with its regular daily operations as well as the extraordinary requirements attendant to the implementation of the transition of full-service stations to post-auction channel assignments in the reorganized television bands following the recent conclusion of the broadcast television spectrum incentive auction.²

Following the completion of the incentive auction, KJLA has implemented a channel sharing arrangement with Station KXLA(TV), Rancho Palos Verdes, California. As a result of that arrangement, KJLA spent much of 2018 engaged in the post-auction process of becoming the sharee of Channel 51, with KXLA. The work necessary to engage in channel sharing

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6567 (2017), *aff'd*. 789 F. 3d 165 (D.C. Cir. 2015).

occurred while the window was open and the channel sharing work was not completed until July 23, 2018.³

The completion of the channel sharing move did not end the transition process for KJLA and KJLA was immediately engaged in another element of the transition. The Los Angeles DMA has been placed in Phase 2 of the transition, a process that commenced on December 1, 2018. In that KXLA's Channel 51 allotment is the 600 MHz band reassigned to other purposes, both KXLA and KJLA must relocate to their new Channel 30 no later than April 12, 2019. The Stations have been at work on seeking reimbursement from the fund established by Congress for transitioning broadcasters⁴ and the time-consuming and difficult process of a new broadcast transmission facility, made even more difficult by the location of the Stations' facilities at the Mount Wilson/Mt. Harvard antenna farm in Los Angeles.

These efforts have overwhelmed the small KJLA management and engineering staff, thereby drawing attention away from such other work as the earth station registration and licensing process. Given the importance of the post-incentive auction transition process, the Commission should recognize that a transitioning broadcaster, in an early Phase, was required to give all of its time and attention to the transition process and provide it with necessary relief.

Considering these facts, KJLA submits that it meets the twin tests of serving the public interest and not undermining the objectives of the freeze.

In regard to the public interest, KJLA has been taking actions necessary to serve the public interest as part of the post-incentive auction transition. Further, KJLA, as a small operator, is not in a position to serve the minority and foreign-language viewers of its unique programming and multicasting services, without assured program delivery. Having assurance

³ LMS No. 0000058520.

⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub L. No. 112-96.

that its earth stations can access available programming and other communications is of critical importance to the future of KJLA, its station, and the viewers who depend on it. With most programming being delivered by satellite, KJLA must have unfettered access to the programming in order to assure that it meets its viewers needs and interests.

As for the harming the objectives of the freeze, KJLA believes that accepting KJLA's applications will not affect those objectives. It has been reported that there are at least 17,000 applications on file and the addition of a small number of others will do no further harm. From the reports contained in the trade press and in *ex parte* communications⁵, there have been no issues raised or concerns described as to the number of applications for licenses or registrations filed during the window. Rather, the parties appear more interested in having an accurate database and accepting KJLA's applications will ensure that the database is full, complete and accurate, a key requirement of the Commission as described as it commenced a review of the usage of the 3.7-4.2 GHz band.⁶

On the basis of the unique circumstances presented, involving a minority-owned, single station full-service broadcaster that has long sought to improve its broadcast service and is dealing with the complexities of the post-incentive auction transition, the public interest is well-served by a waiver of the freeze and the acceptance of applications that will enable this broadcaster to continue to access the necessary satellite-delivered programming for its diverse viewing public, which causing no material harm to the parties seeking to make use of the C-Band in the distant future., KJLA clearly has overcome the high hurdle for waiver requests and is entitled to the waiver it is seeking.

⁵ Notice of Ex Parte Presentation, of the C-Band Alliance, Intelsat, SES, and Auctionomics, in GN Docket Nos. 17-183 and 18-122, submitted November 19, 2018.

⁶ *Order and Notice of Proposed Rulemaking*, FCC 18-91, released July 13, 2018 (at ¶ 26, et seq.).

