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WCNO, Inc.
c/o Robert A. Beizer, Esq.
Sidley & Austin
1722 Eye Street, NW
Washington, DC 20006

Re: Channel 54
Slidell, LA

Gentlemen:

This is with respect to your July 31, 1990, petition to rescind the Commission's October 6, 1987, waiver of the television "freeze" and to dismiss the pending application of Caroline K. Powley d/b/a Unicorn/Slidell LPTV (Powley).

On July 16, 1986, the Commission imposed a "freeze" on applications for new television stations within the minimum co-channel separation distances from 30 designated television markets. Advanced Television Systems, Mimeo No. 4074 (released July 17, 1987) (the "Freeze Order"). The "freeze" was imposed because the high densities of existing television stations in those markets limited the spectrum available for high-definition television and advanced television ("ATV") service there, and the Commission wanted to preserve its spectrum allocation options for such ATV use. Consequently, all new television proposals for communities within 219.5 miles (353.2 kilometers) (for VHF) and 204.5 miles (329 kilometers) of New Orleans, Louisiana, are subject to the "freeze". Slidell is a suburb of New Orleans, located just north of the city, and is therefore in the "freeze" area.

On August 11, 1987, Northshore Television, Inc. (Northshore), a prospective applicant for the channel, sought waiver of the "freeze" in order to apply for Channel 54 in Slidell. That waiver request was ultimately granted. Northshore, however, never filed an application for the channel. On May 18, 1990, Powley filed her application for the channel (BPCT-900518KO), and that application was accepted for filing on June 25, 1990, because the October 6, 1987 waiver of the "freeze" was deemed still to apply. TV Broadcasting Application Accepted for Filing and Notification of Cut-Off Date, Mimeo No. 3757, Report No. A-163 (released June 25, 1990). On July 31, 1990, you filed the instant petition to rescind the waiver of the "freeze" and to dismiss Powley's application. In support of your petition, you argue that the factual and legal basis for the waiver no longer exists, since Northshore did not itself file an application. You further contend that the Commission has recently tightened its standard in evaluating "freeze" waiver requests and that the arguments raised by Northshore in 1987 would likely not pass muster today.

Grant of Northshore's "freeze" waiver request was not limited to, or otherwise contingent on, Northshore itself filing an application for Channel 54. Rather, in making the determination that waiver of the "freeze" was warranted, the Commission concluded that utilization of the channel would not have an adverse effect on ATV use in the area. Once that determination was made, Northshore and any other prospective applicants were eligible to seek a Channel 54 operation in Slidell, and all subsequent applications for the channel could be accepted for filing without additional "freeze" waiver justifications being filed. Powley properly relied on the availability of the channel when she prepared and filed her application, and her rights must now be protected. Finally, whether a waiver of the "freeze" is warranted varies widely from community to community and even from channel to channel. It is impossible, therefore, to generalize whether waiver for one channel in one community would necessarily dictate a similar result in another.

Accordingly, for the reasons stated above, your petition to rescind the October 6, 1987, waiver of the television "freeze" and to dismiss Powley's application IS DENIED.

Sincerely,

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

cc: Caroline K. Powley

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