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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas, Esquire
 Secretary
 Federal Communications Commission
 Room TW-B204
 445 12th Street, S.W.
 Washington, DC 20554

Re: Amendment to Petition for Rulemaking to Amend
 Section 73.606(b) of the Commission's Rules
 Channel 56 - New Castle, Pennsylvania

Dear Ms. Salas:

Transmitted herewith on behalf of Pappas Telecasting of America, A California Limited Partnership ("Pappas"), are an original and four copies of an "Amendment to Petition for Rulemaking," by which Pappas seeks to amend its pending Petition for Rulemaking, filed July 22, 1996.

Please be advised that this amended rulemaking petition is being filed pursuant to *Public Notice*, 14 FCC Rcd 19559 (1999) ("Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations"), as extended by *Public Notice*, 15 FCC Rcd 4974 (2000).

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,
 FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting
 Counsel for Pappas Telecasting of America,
 A California Limited Partnership

Enclosure

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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JUL 17 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.606(b))
TV Table of Allotments)
TV Broadcast Stations)
(New Castle, Pennsylvania))

MM Docket No. _____
RM No. _____

To: Chief, Allocations Branch

AMENDMENT TO
PETITION FOR RULEMAKING

PAPPAS TELECASTING OF AMERICA,
A CALIFORNIA LIMITED PARTNERSHIP

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July 17, 2000

TABLE OF CONTENTS

	<u>Page</u>
Summary	ii
Request for Waiver of the FCC’s Distance Separation Requirements	4
I. The Commission Previously Has Waived the Distance Separation Requirements to Permit the Allotment of New Television Stations In An Effort to Foster the Development of New Networks	4
II. A Grant of the Requested Waiver Would Provide Substantial Public Interest Benefits Which Greatly Outweigh the Commission’s Interest in Strictly Adhering to Its General Spacing Requirements	8
III. A Grant of the Requested Waiver Would Not Undermine the Commission’s General Policy Regarding Short-Spaced Allotments	12
IV. The FCC Must Give This Waiver Request the Requisite “Hard Look”	17
Conclusion	18

SUMMARY

As demonstrated herein, Pappas's pending rulemaking petition requesting the allotment of Channel 56 at New Castle, Pennsylvania, is short-spaced to two DTV allotments as well as an NTSC station. Accordingly, Pappas seeks to amend its pending allotment rulemaking petition pursuant to the Commission's *Public Notice*, 14 FCC Rcd 19559 (1999) ("Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations") ("*Window Filing Notice*").

As demonstrated in the attached engineering statement, the proposed allotment of Channel 56 at New Castle would not cause prohibited interference to any NTSC or DTV station. Although the proposed allotment is short-spaced to Station WNPA(TV), Channel 49, Jeanette, Pennsylvania, the short-spacing involves a "UHF taboo", +7 oscillator interference relationship in which the only anticipated interference -- which should be minimal -- is to the proposed Channel 56 facility at New Castle. Thus, the proposed allotment of Channel 56 at New Castle would cause no more interference to Station WNPA than a fully-spaced allotment.

Moreover, although the proposed allotment is short-spaced to a Channel 57 DTV allotment at Steubenville, Ohio, and a Channel 48 DTV allotment at Pittsburgh, Pennsylvania, the attached engineering statement demonstrates that the operation of Channel 56 at New Castle would cause either no interference or less than 0.5% interference to the short-spaced DTV allotments, which is within the Commission's rounding tolerance.

Furthermore, a grant of this amended petition and the accompanying short-spacing waiver request would provide substantial public interest benefits which significantly outweigh the Commission's general regulatory interest in strictly adhering to its spacing rules. As demonstrated

herein, the proposed allotment would promote the objectives of Section 307(b) of the Communications Act by providing the community of New Castle with its first local television service, and serve the second television allotment priority established in the *Sixth Report and Order* of providing each community with at least one television broadcast station. Moreover, the proposed allotment would provide an additional competitive broadcast station in a top 100 television market, which would help foster the development of new national networks by providing an additional broadcast outlet with which to establish a primary affiliation. The proposed allotment also would (i) provide a new television service to over 3.3 million people in the New Castle area; (ii) provide an opportunity for new entry; (iii) promote viewpoint diversity in the Youngstown television market; and (iv) increase competition in the local advertising market.

Further, because the *Window Filing Notice* represents the last opportunity to amend the NTSC Table of Allotments, a grant of the requested waiver would not open the floodgates to similar waiver requests in the future because there can be no further analog allotments after the close of this filing window. Indeed, as the Commission determined in the *Interim Policy and VHF Top 100 Markets*, strict adherence to the Commission's distance separation requirements in this case would achieve a result contrary to the public interest by preventing a new and much needed television service, while a waiver of the spacing rules would not undermine the Commission's general allotment policy.

For all of these reasons, Pappas requests that the Commission amend the TV Table of Allotments by allotting Channel 56 to New Castle, Pennsylvania, as the community's first local television service.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No. _____
TV Table of Allotments)	RM No. _____
TV Broadcast Stations)	
(New Castle, Pennsylvania))	

To: Chief, Allocations Branch

**AMENDMENT TO
PETITION FOR RULEMAKING**

Pappas Telecasting of America, A California Limited Partnership (“Pappas”), by counsel, and pursuant to Section 1.401 of the Commission's rules and *Public Notice*, 14 FCC Rcd 19559 (1999) (“Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations”) (“*Window Filing Notice*”),¹ hereby amends its Petition for Rulemaking, filed July 22, 1996, requesting the allotment of Channel 56 to New Castle, Pennsylvania, as that community’s first local television service.² In support of this amended petition, the following is stated:

¹ On March 9, 2000, the Commission extended the window filing period until July 15, 2000. See *Public Notice*, 15 FCC Rcd 4974 (2000) (“Window Filing Opportunity For Certain Pending Applications and Allotment Petitions For New Analog TV Stations Extended to July 15, 2000”).

² Pappas also filed an accompanying application for a new television station to operate on Channel 56 at New Castle. The application was filed on July 22, 1996.

As demonstrated in the attached engineering statement of Keith Leitch, from the allotment reference point,³ the proposed allotment of Channel 56 at New Castle is short-spaced to Station WNPA(TV), Channel 49, Jeannette, Pennsylvania.⁴ See Engineering Statement, p. 2 and Exhibit RM-1. However, this NTSC short-spacing involves a "UHF taboo" +7 oscillator interference relationship in which the only anticipated interference -- which should be minimal -- is to the proposed Channel 56 facility at New Castle. Oscillator interference does not occur on channels that are seven channels below that of another television station.⁵ Indeed, television receivers which have been manufactured in the last 20 years have electronic circuitry that is immune to the local oscillator interference that Section 73.698 of the Commission's rules is intended to prevent. See FCC Letter, p. 2. Thus, the proposed allotment of Channel 56 at New Castle would not cause harmful interference to Station WNPA.

The proposed allotment of Channel 56 at New Castle also would result in two minor short-spacings that do not meet the distance separation requirements contained in Section 73.623(d) of the

³ The reference coordinates for the proposed allotment are North Latitude: 40° 59' 58"; West Longitude: 79° 59' 31". See Engineering Statement, p. 1. These coordinates represent Pappas' proposed transmitter site. The landowner has indicated that the site will be available for the construction of a new television station in the event Channel 56 is allotted to New Castle.

⁴ The proposed allotment also is short-spaced by 0.8 kilometers to a pending application for a noncommercial television station to operate on Channel *58 at Youngstown, Ohio. See Engineering Statement, p. 2 and Exhibit RM-1. Pappas respectfully submits that this short-spacing is *de minimis*.

⁵ See Engineering Statement, p. 2. See also FCC Letter dated May 31, 1996, from Barbara A. Kreisman, Chief, Video Services Division, Mass Media Bureau, to Montgomery County Media Network, Inc. (Reply Ref: 1800OE-1DOB) (granting short-spaced application and accompanying request for waiver of Section 73.698 of the rules with respect to local oscillator interference) ("FCC Letter"). A copy of the FCC Letter is appended hereto.

Commission's rules with respect to DTV allotments.⁶ Specifically, the proposed allotment is short-spaced to a Channel 57 DTV allotment at Steubenville, Ohio, and a Channel 48 DTV allotment at Pittsburgh, Pennsylvania. *See* Engineering Statement, p. 2 and Exhibit RM-2. However, as demonstrated in the FLR studies attached to Mr. Leitch's engineering statement, the operation of Channel 56 at New Castle would cause less than 0.5% interference to the Channel 57 DTV allotment at Steubenville, Ohio, which is within the Commission's rounding tolerance.⁷ Moreover, the proposed allotment would cause no interference to the Channel 48 DTV allotment at Pittsburgh. *See* Engineering Statement, Exhibits FLR-1 and FLR-2.

In response to the DTV Table of Allotments established in the *Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997), Pappas conducted an extensive search in an attempt to identify an alternative channel/transmitter site combination for its proposed allotment at New Castle that would be fully-spaced to all other NTSC and DTV stations. As indicated above, however, Pappas' efforts were unsuccessful. Nevertheless, Pappas has proposed the allotment of Channel 56 because it poses the least technical concerns. Indeed, the proposed allotment of Channel 56 at New Castle would enable a new full-service television station to commence operation from the allotment reference point with 1,000 kilowatts omni-directional effective radiated power at an antenna height of 339 meters above average terrain without adversely affecting any other television station, including Class A LPTV stations. *See* Engineering Statement, pp. 1-2. The proposed NTSC

⁶ In the *Window Filing Notice*, the Commission stated that amendments to existing petitions to add a new NTSC channel allotment must meet the distance separation requirements for DTV stations which are contained in Section 73.623(d) of the Commission's rules.

⁷ *See Report and Order* in MM Docket No. 00-10, *Establishment of a Class A Television Service*, FCC 00-115, ¶74 (released April 4, 2000) (NTSC applicants allowed a rounding tolerance of 0.5% in protecting DTV stations).

facility would bring a new television service to 3,309,245 people in the New Castle area, and would provide an 80 dBu contour over the entire community of New Castle. *Id.* at 1. Accordingly, Pappas is submitting below a request for waiver of Section 73.623(d) of the Commission's rules concerning the above-described short-spacings. As demonstrated therein, a grant of the requested waiver would provide substantial public interest benefits, and would result in no more interference than a fully-spaced allotment.

REQUEST FOR WAIVER OF THE FCC'S DISTANCE SEPARATION REQUIREMENTS

Pappas respectfully requests that the Commission waive the distance separation requirements contained in Sections 73.610, 73.698, and 73.623(d) of the Commission's rules in order to permit the proposed allotment. As demonstrated in greater detail herein, a grant of the requested waiver would promote the emergence of new national television networks by providing an additional broadcast outlet in a top 100 television market with which to establish a primary affiliation. The proposed allotment also would provide the community of New Castle with its first local television service and thereby promote the objectives of Section 307(b) of the Communications Act of 1934, as amended (the "Act"). In support of this waiver request, the following is stated:

I. The Commission Previously Has Waived the Distance Separation Requirements to Permit the Allotment of New Television Stations In an Effort to Foster the Development of New Networks.

In Docket No. 13340,⁸ the Commission instituted a rulemaking proceeding in an effort to find a means of alleviating the need for additional channel assignments in the larger television markets

⁸ *Interim Policy on VHF Television Channel Assignments*, 21 RR 1695 (1961), *recon. denied*, 21 RR 1710a (1961) ("*Interim Policy*").

in order to foster the development of a nationwide competitive television system. The Commission concluded that the most efficient means of accomplishing its objective would be to permit, under limited circumstances, channel assignments at substandard spacings. The short-spaced allotments were authorized subject to the requirement that the new stations provide protection to the existing short-spaced stations to assure that they would not receive interference in excess of the amount they otherwise would receive from a co-channel station operating with maximum facilities at full distance separation. The Commission designated ten markets in which such a “squeeze in” procedure would be considered. Many of these proposals, as well as those which arose out of the Commission’s *Interim Policy*, involved a third commercial VHF allotment in a market that was designed to provide an additional broadcast outlet which was critical to the establishment of a third competitive network. *See, e.g., Grand Rapids, Michigan*, 21 RR 1737 (1961) (Commission assigned a second VHF channel to Grand Rapids and a third to the Grand Rapids-Kalamazoo market);⁹ *Rochester, New York*, 21 RR 1748a (1961) (FCC assigned a third commercial VHF station to the community); *Syracuse, New York*, 21 RR 1754 (1961) (same).

The Commission later extended its policy of waiving its spacing provisions in appropriate circumstances to permit “move-in” applications. In *New Orleans Television Corp.*, 23 RR 1113, 1115 (1962), Station WVUA-TV, New Orleans, filed an application to move closer to its community of license to a site 30 miles short-spaced to co-channel Station WJTV, Jackson, Mississippi. Station WVUA-TV requested a waiver of the mileage separation requirements and proposed to provide

⁹ In *Grand Rapids*, the Commission allotted Channel 13 to Grand Rapids, which required the substitution of Channel 9 for Channel 13 at Cadillac, Michigan, and the substitution of Channel 7 for a Channel 9 allotment at Alpena, Michigan. *Id.* at 1745. The Commission’s action was designed to alleviate the “critical shortage of competitively comparable facilities in major markets” 21 RR at 1745.

equivalent protection to Station WJTV. In reviewing the application, the Commission noted that its long-standing policy of fostering the development of “at least three” competitive television networks had often been frustrated by its inability to assign a third competitive commercial VHF channel. *Id.* at 1115. The Commission also expressly acknowledged the concerns which led to the *Interim Policy*:

The problem with which the Commission grappled in Docket No. 13340 was the fostering of a nationwide competition network situation. *To accomplish this purpose it is necessary to assure the availability of competitive facilities to the networks within the major markets, for the economic ability of a network to survive and furnish the public with the benefits of its operation hinges ultimately on its access to competitive facilities within the major markets.* By assuring the existence of a third competitive station in New Orleans, the Commission benefits not only the viewing public of that city but, ultimately, the public of the entire nation. We believe that the benefits to be derived from furtherance of this policy justify the use of Channel 12 in New Orleans at substandard spacings.

Id. at 1117 (initial emphasis added), citing *Interim Policy*, 21 RR at 1710c. As reflected above, in granting Station WUVA-TV’s short-spaced application, the Commission not only provided a third competitive station in New Orleans, but the public interest benefits resulting from the grant of the short-spaced application extended to the entire country due to the Commission’s effort to promote a third national network. *Id.* at 1117.

Similarly, in *Television Broadcasters, Inc.*, 4 RR 2d 119 (1965), Station KBMT(TV), Beaumont, Texas, an ABC affiliate, sought to move its transmitter approximately 34 miles north of its existing site to a location which was 18.8 miles short-spaced to co-channel Station KSIA-TV, Shreveport, Louisiana. The applicant proposed to provide equivalent protection to KSIA-TV by directionalizing its signal away from the short-spaced station, and requested a waiver of Section 73.610 of the rules. *Id.* at 121. In support of its waiver request, KBMT claimed that, from its

existing transmitter site, it could not effectively compete with the local CBS and NBC affiliates which served essentially the same area, and was operating at a substantial loss.¹⁰ *Id.* at 121. KBMT contended that a grant of its application would enhance its competitive position as well as that of ABC vis-a-vis the other stations and networks in the market, and would provide its coverage area with a third competitive network television service. *Id.* at 123. In granting KBMT's application and accompanying request for waiver of Section 73.610 of the rules, the Commission stated:

While it is neither our purpose nor function to assure competitive equality in any given market, we have a duty at least to take such actions as will create greater opportunities for more effective competition among the networks in major markets.

Id. at 123, citing *Peninsula Broadcasting Corporation*, 3 RR 2d 243 (1964).¹¹

Furthermore, in *VHF Top 100 Markets*,¹² the Commission granted requests for waiver of Section 73.610 to permit the allotment of new short-spaced VHF assignments to Charleston, West

¹⁰ The Commission found that there was a substantial disparity between the advertising rates of KBMT and the other network affiliates in the market. *Id.* at 123.

¹¹ In *Peninsula Broadcasting*, the applicant alleged that a grant of its application was warranted in order to provide three competitive network services in the Norfolk, Virginia, television market. In granting the application and the accompanying short-spacing waiver request, the Commission stated:

[We have] long been concerned with the problem of making three truly competitive network services available to the public in major markets and where the opportunity is presented to achieve this objective without detriment to anyone and with benefit to many, we think . . . it is clear that a grant of the application would be warranted.

3 RR 2d at 248.

¹² *Petition for Rule Making to Amend Television Table of Assignments to Add New VHF Stations in the Top 100 Markets and to Assure that the New Stations Maximize Diversity of Ownership, Control and Programming*, BC Docket No. 20418, *Report and Order*, 81 FCC 2d 233 (1980) ("*VHF Top 100 Markets*"), *recon. denied*, 90 FCC 2d 160 (1982), *aff'd sub nom. Springfield Television of Utah, Inc. v. FCC*, 710 F.2d 620 (10th Cir. 1983).

Virginia; Johnstown, Pennsylvania; Salt Lake City, Utah; and Knoxville, Tennessee. Each of these short-spaced allotments was subject to the condition that the new station provide equivalent protection to the existing station to which it was short-spaced. *Id.* at 234.

In granting the petitioners' waiver requests, the Commission recognized that the four VHF drop-ins represented a significant departure from past Commission practice.¹³ Nevertheless, the Commission concluded that the new VHF allotments would serve important public interest objectives such as providing new local service, the promotion of additional networks, and increased competition in advertising markets. The Commission found these to be substantial contributions to the public interest. *Id.* at 253. Moreover, on reconsideration, the Commission concluded that application of the distance separation rules would achieve a result contrary to the public interest by preventing new and needed television services, and that a waiver of the rules would not undermine the policy behind them as set forth in the *Sixth Report and Order* in Docket Nos. 8736 *et al.*, *Amendment of Section 3.606 of the Commission's Rules and Regulations*, 41 FCC 148 (1952) ("*Sixth Report and Order*").

II. A Grant of the Requested Waiver Would Provide Substantial Public Interest Benefits Which Greatly Outweigh the Commission's Interest in Strictly Adhering to Its General Spacing Requirements.

The public interest benefits that would result from a grant of Pappas' amended rulemaking petition are the same public interest objectives which the Commission sought to achieve in the

¹³ Despite the Commission's *Interim Policy*, there had been no short-spaced VHF allotments in the continental United States prior to its decision in *VHF Top 100 Markets*. 81 FCC 2d at 239.

Interim Policy and VHF Top 100 Markets.¹⁴ Indeed, this amended rulemaking petition and accompanying request for waiver of the Commission's distance separation requirements would provide the same, if not greater, public interest benefits than the Commission previously found sufficient to justify a waiver of its distance separation requirements. As stated above, the allotment of Channel 56 will provide the community of New Castle with its first local television service, which will promote the objectives of Section 307(b) of the Communications Act of providing a fair, efficient and equitable distribution of television broadcast stations among the various states and communities. 47 U.S.C. §307(b). See *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) (describing goal of Communications Act to "secure the maximum benefits of radio to all the people of the United States"); *FCC v. Allentown Broadcasting Co.*, 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to "secure local means of expression"). In addition, the proposed allotment will promote the second television allotment priority established in the *Sixth Report and Order* of providing each community with at least one television broadcast station. 41 FCC at 167.

Even more importantly, however, Pappas' pending rulemaking petition and its accompanying application for a new television station in New Castle, Pennsylvania, which were both filed on July 22, 1996, were part of a series of coordinated filings consisting of approximately 20 rulemaking petitions and 40 construction permit applications for new television stations, many of which propose to bring a first local television service to the specified community. The various rulemaking petitions and accompanying applications all specified communities within the top 100 television markets in which there were no full-power television stations available to affiliate with The WB Television

¹⁴ Although this waiver request involves a proposed UHF allotment, rather than a VHF station, the public interest objectives set forth in the *Interim Policy and VHF Top 100 Markets* are equally applicable to Pappas' allotment proposal.

Network ("The WB"). Each of the various petitioners/applicants (collectively, "Petitioners") who comprised this coordinated filing effort then had affiliation agreements with The WB for some or all of their existing television stations. The WB indicated a willingness to enter into further affiliation agreements with the Petitioners in the event they were ultimately successful in obtaining a license for their proposed stations.¹⁵

As the Commission is well aware, almost two-thirds of all television markets have only four commercial stations. As a result, it is extremely difficult for any new network, including The WB, the United Paramount Network ("UPN"), or Paxson Network ("Paxnet") to find affiliates in the major markets. The WB generally has been the fifth, and often the sixth, network to enter those top 100 markets in which it has an affiliate. Indeed, The WB has explained to the Commission in a variety of proceedings that its primary challenge in establishing itself as a nationwide network has been finding a sufficient number of stations with which to affiliate.¹⁶ Thus, a grant of this waiver request and the allotment of Channel 56 to New Castle -- in conjunction with grants of the other pending rulemaking petitions and applications which comprise this larger overall proposal -- would

¹⁵ Pappas is inclined to enter into an affiliation agreement with The WB in the event Channel 56 is allotted to New Castle and it is successful in obtaining a construction permit for the proposed new NTSC station.

¹⁶ See, e.g., Comments of The WB Television Network, *Establishment of a Class A Television Service*, MM Docket No. 00-10 (filed Feb. 10, 2000); Comments and Reply Comments of The Warner Bros. Television Network, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 (filed Oct. 30, 1995, Nov. 27, 1995); Reply Comments of The Warner Bros. Television Network, *Reexamination of The Policy Statement in Comparative Broadcast Hearings*, GC Docket No. 92-52 (filed Aug. 22, 1994). UPN has expressed similar difficulties in attempting to establish a nationwide presence. See Comments of the UPN, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 at 21-22 (filed Oct. 30, 1995).

provide much needed assistance in fostering the development of new national networks by helping to alleviate the critical need for additional broadcast outlets. Specifically, a grant of this waiver request would permit the allotment of a new television station in a top 100 market with which The WB or another emerging network could affiliate, and thereby make progress towards achieving national penetration and a competitive stronghold with the established networks. Although there is no guarantee that Pappas will ultimately acquire the construction permit for the proposed new television station at New Castle or that the station will affiliate with The WB, the salient fact is that the allotment of Channel 56 to New Castle would provide an additional broadcast outlet for all of the new networks to have the opportunity to gain an affiliation and thereby strengthen their effort to obtain a nationwide audience.

As demonstrated above, this rulemaking petition and accompanying waiver request provide another opportunity for the Commission to fulfill the public interest objectives articulated in the *Interim Policy* and *VHF Top 100 Markets*. By waiving the minimum distance separation requirements and allotting Channel 56 to New Castle, the Commission can provide an additional broadcast outlet in a top 100 television market,¹⁷ and thereby foster the development of a new national network. In addition, the allotment of Channel 56 to New Castle would (i) provide the community with its first local television service; (ii) provide a new television service to over 3.3 million people in the New Castle area; (iii) provide an opportunity for new entry into the television broadcast industry; (iv) promote viewpoint diversity in the Youngstown television market; and (v) increase competition in the local advertising market. Indeed, in light of the Commission's relaxation

¹⁷ The Youngstown market currently is the 99th television market. *See Broadcasting & Cable*, p. 246 (2000).

of the local television ownership rule and the ever increasing consolidation in the broadcast industry, the substantial public interest benefits that would result from this allotment proposal have even more significance today than those that existed at the time the *Interim Policy* and *VHF Top 100 Markets* were adopted. Consistent with the requirements set forth in the *Interim Policy* and *VHF Top 100 Markets*, however, the Commission should impose an appropriate site restriction on the proposed allotment to ensure that Station WNPA would be subject to no greater interference from Channel 56 at New Castle than if the proposed allotment were fully-spaced.

III. A Grant of the Requested Waiver Would Not Undermine the Commission's General Policy Regarding Short-Spaced Allotments.

The full Commission articulated its policy regarding short-spaced allotments in *Pueblo, Colorado*, 16 Comm. Reg. (P&F) 610 (1999) (*Memorandum Opinion and Order on Remand*):

[B]y maintaining strict adherence to a fully-spaced allotment scheme, we preserve the capacity to permit necessary adjustments to spacing where the construction of actual facilities so requires, while minimizing potential adverse interference effects from such adjustments. This is because, when a party files a petition for rulemaking to amend the Table of Allotments, a hypothetical set of reference coordinates are used for purposes of making the allotment. The petitioner is not required to specify an actual transmitter site where the station will be operated, only a theoretical fully-spaced transmitter site location. At this point, the Commission disfavors making a short-spaced allotment because it does not want to begin the process with a substandard allotment. In order to protect the integrity of the Table, the Commission demands that the process of creating a new station begin with an allotment that is not already short-spaced. However, later, when a party files an application to construct its actual transmitter site, and the Commission examines the actual facilities that will be constructed to operate the station, it may be determined that no fully-spaced transmitter sites are available. At that later point in the process, the Commission may allow a deviation of its spacing rules when it is demonstrated that the public interest benefits are great enough to support a waiver.

Consistent with that approach, we have only permitted short-spaced allotments where the petitioner has demonstrated a "compelling need for departure from the established interstation separation standards."

Id. at 616, ¶¶23-24 (citations omitted). The full Commission has also stated that “[s]trict adherence to the spacing requirements set forth in the Table of Allotments is necessary . . . in order to provide a consistent, reliable and efficient scheme of [allotments].” *Chester and Wedgefield, South Carolina*, 5 FCC Rcd 5572 (1990).

Pappas respectfully submits that the substantial public interest benefits that would result from the proposed allotment of Channel 56 to New Castle more than satisfy the Commission’s “compelling need” standard. However, even assuming, *arguendo*, that the Commission were to conclude that the significant public interest objectives articulated in the *Interim Policy* and *VHF Top 100 Markets* -- which would be promoted by a grant of Pappas’ petition -- are insufficient to warrant the proposed short-spaced allotment, the Commission’s general policy regarding short-spaced allotments should not be applied in this case. Indeed, the public interest benefits that would result from the proposed allotment substantially outweigh the Commission’s general regulatory interest in protecting the “integrity of the Table of Allotments,” especially considering the specific circumstances of this case. As demonstrated above, the proposed allotment of Channel 56 at New Castle is short-spaced to one NTSC station, which operates seven channels below the proposed allotment. As the Commission previously has recognized,¹⁸ the +7 channel relationship between the two stations, which has the potential to create local oscillator interference, will not cause any interference to the short-spaced station, WNPA, Jeanette, Pennsylvania. Any potential interference that might result from the operation of the two stations would be to the Channel 56 facility at New Castle. Moreover, with respect to the short-spaced DTV allotments, the proposed allotment of Channel 56 at New Castle would cause either no interference or less than 0.5% interference, which

¹⁸ See FCC Letter, p. 2.

is within the Commission's rounding tolerance.¹⁹ Therefore, the proposed allotment would, in fact, cause no greater interference than a fully-spaced allotment.

As reflected in the Commission's *Memorandum Opinion and Order on Remand in Pueblo, Colorado*, by requiring that a proposed allotment be fully-spaced at the outset, the Commission's general allotment policy is designed to "minimiz[e] potential adverse interference effects" that may result from "necessary adjustments" in the event no fully-spaced transmitter sites are available at the application stage. However, contrary to the Commission's general statement in *Pueblo, Colorado*, the proposed allotment reference point in this case does not represent a "hypothetical set of reference coordinates," but, instead, represents Pappas' proposed transmitter site. The land owner has indicated that the site will be made available in the event this petition is granted and Channel 56 is allotted to New Castle. Thus, although the proposed allotment reference point has not yet been specified in a construction permit application for the Channel 56 facility at New Castle, the allotment reference point is an available transmitter site as required by Section 73.611(a)(4) of the Commission's rules.²⁰ Pappas therefore requests that the Commission allot Channel 56 to New Castle with an appropriate site restriction to ensure that the short-spacings between the transmitter

¹⁹ See *Report and Order* in MM Docket No. 00-10, *Establishment of a Class A Television Service*, FCC 00-115, ¶74 (released April 4, 2000) (NTSC applicants allowed a rounding tolerance of 0.5% in protecting DTV stations).

²⁰ In a related context, the Commission has not hesitated to allot a new channel based upon the reference coordinates of a petitioner's proposed transmitter site. For example, in *Virginia Beach, Virginia*, 11 FCC Rcd 4715 (Allocations Branch 1996), the Commission allotted a new television channel to Virginia Beach even though the center city coordinates of the community of license were within the "freeze zone" established by the ATV freeze. See *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811, 1987 FCC LEXIS 3477 (July 17, 1987), 52 Fed.Reg. 28346 (1987). See also *Wittenberg, Wisconsin*, 11 FCC Rcd 12231 (Allocations Branch 1996) (same).

site for the proposed Channel 56 facility at New Castle and the Channel 57 and Channel 48 DTV allotments at Steubenville, Ohio and Pittsburgh, Pennsylvania, respectively, will be no greater than that proposed in this amended petition.

Furthermore, Pappas respectfully submits that the Commission's interest in maintaining the "integrity of the Table of Allotments" and providing "a consistent, reliable and efficient" allotment scheme should be given less consideration with respect to the rulemaking petitions and amended petitions filed in response to the *Window Filing Notice* because this is the last opportunity to amend the NTSC Table of Allotments. The deadline for filing allotment rulemaking petitions for new NTSC stations expired on July 25, 1996.²¹ Upon the close of this window filing period on July 17, 2000, there will be no further opportunity to amend the NTSC Table of Allotments. Therefore, because the allotment proposals filed during this window represent the last NTSC rulemaking petitions that will ever be filed with the Commission, a waiver of the Commission's distance separation requirements pursuant to the policy objectives set forth in the *Interim Policy* and *VHF Top 100 Markets* would not open the floodgates to similar waiver requests in the future. As in *VHF Top 100 Markets*, the *Window Filing Notice* provides a limited filing opportunity during which there can be only a small, finite number of short-spaced allotment proposals that would provide sufficient public interest benefits to warrant a waiver of the spacing rules.

Further, due to the relatively short time period before the end of the NTSC/DTV transition period, which is scheduled to occur at the end of 2006, the short-spacings that would result from the proposed Channel 56 facility at New Castle amount to what essentially is an interim proposal. At

²¹ See *Sixth Report and Order* in MM Docket No. 87-268, *Advanced Television Systems and Their Impact Upon the Existing Broadcast Service*, 12 FCC Rcd 14588, 14635-36 (1997).

the end of the transition period, when television stations are required to return one of their paired channels, the proposed Channel 56 facility at New Castle will be able to move to a fully-spaced digital allotment inside the core for its DTV operation.²² In light of the substantial likelihood that: (i) the Commission will not grant this amended petition before the fourth quarter of 2000; (ii) the Commission will not hold an auction for the competing applications for the new New Castle television station before the third quarter of 2001; (iii) a construction permit for the new New Castle station will not be issued before the first quarter of 2002; and (iv) it will take Pappas or any other permittee at least one year to complete construction of the new television station; the proposed Channel 56 facility at New Castle is not likely to commence operation until sometime in 2003. Assuming that the transition period ends as scheduled, this would mean that the proposed new NTSC station at New Castle would operate from a short-spaced allotment for a period of less than four years before moving to a fully-spaced digital allotment inside the core.

Many industry observers believe, however, that although the DTV transition period is scheduled to end in 2006, due to the market penetration requirement contained in Section 309(j) of the Act, 47 U.S.C. §309(j)(14)(B), the transition deadline may be extended.²³ Assuming, *arguendo*, that the transition deadline were to be extended by several years, the substantial public interest benefits that would result from having the proposed New Castle NTSC station commence operation prior to the end of the transition period greatly outweigh the Commission's general policy of

²² Moreover, Station WTOV-TV, Channel 9, Steubenville, Ohio, which has been assigned DTV Channel 57, either will be assigned an in-core channel at the end of the transition period upon which to continue its digital operation, or will revert its digital operation to its current NTSC channel.

²³ See, e.g., *Completing the Transition to Digital Television*, Congressional Budget Office, Congress of the United States (Sept. 1999).

“protecting the integrity of the Table of Allotments” in this narrow context in which the licensing of analog television stations has come to an end.²⁴

IV. The FCC Must Give This Waiver Request the Requisite “Hard Look.”

It is well established that the Commission is “required to give waiver requests a ‘hard look’ and may not treat well-pleaded waiver requests in a perfunctory manner.” *VHF Top 100 Markets*, 90 FCC 2d 160, 166 (1982) (reconsideration order), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). Indeed, as the D.C. Circuit has made clear:

. . . [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, that has been adjudged in the public interest.

WAIT Radio, 418 F.2d at 1157. Therefore, in considering this waiver request, Pappas respectfully submits that the Commission must look beyond its general policy regarding short-spaced allotments, and determine whether the rationale underlying that policy would be undermined in light of the substantial and broad-reaching public interest benefits that would result from a waiver of its spacing rules, especially considering the unique and extremely limited context in which this waiver request is presented.

CONCLUSION

As demonstrated above, a grant of this amended petition and the accompanying waiver request would provide substantial public interest benefits by providing an additional competitive broadcast outlet in a top 100 television market which would help foster the development of new national networks. At the same time, the proposed allotment would provide the community of New

²⁴ See *Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd at 14639 ¶12.

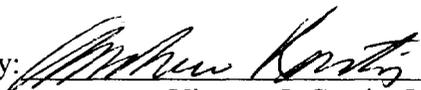
Castle with its first local television service, which would promote the objectives of Section 307(b) of the Act and the second television allotment priority established in the *Sixth Report and Order*. Moreover, by allotting Channel 56 with an appropriate site restriction, the proposed allotment would create no more interference than a fully-spaced allotment. Furthermore, because this is the last opportunity to amend the NTSC Table of Allotments, a grant of this waiver request would not open the floodgates to similar waiver requests in the future because there can be no further analog allotments after the close of this filing window. Indeed, as the Commission determined in the *Interim Policy* and *VHF Top 100 Markets*, strict adherence to the Commission's distance separation requirements in this case would achieve a result contrary to the public interest by preventing a new and much needed television service, while a waiver of the spacing rules would not undermine the Commission's general allotment policy.

For all of these reasons, Pappas requests that the Commission amend the TV Table of Allotments by allotting Channel 56 to New Castle, Pennsylvania, as the community's first local television service. In the event Channel 56 is allotted to New Castle, Pappas will amend its pending application (or submit a new application) in accordance with the Report and Order issued in this proceeding to specify the new channel, and modify its technical proposal as necessary so that the proposed Channel 56 NTSC facility will not cause harmful interference to any other television station. In the event its application is granted, Pappas will promptly construct and operate the new NTSC facility.

WHEREFORE, in light of the foregoing, Pappas Telecasting of America, A California Limited Partnership, respectfully requests that the Commission GRANT this amended petition for rulemaking, AMEND the TV Table of Allotments, and ALLOT Channel 56 to New Castle, Pennsylvania, as that community's first local television service.

Respectfully submitted,

PAPPAS TELECASTING OF AMERICA,
A CALIFORNIA LIMITED PARTNERSHIP

By: 

Vincent J. Curtis, Jr.
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 North Seventeenth Street
11th Floor
Arlington, Virginia 22209
(703) 812-0400

July 17, 2000

WES, INC.
6200 Valeria Ln.
El Paso, TX 79912

505-589-2224

**ENGINEERING EXHIBIT
PETITION TO MODIFY THE TABLE OF
ALLOTMENTS TO ALLOCATE
CHANNEL 52 TO NEW CASTLE, PA**

July 12, 2000

ENGINEERING STATEMENT

Wes, Inc.

DECLARATION

I, Keith J. Leitch declare and state that I am a Certified Broadcast Engineer, by the Society of Broadcast Engineers, and my qualifications are a matter of record with the Federal Communications Commission, and that I am an engineer in the firm of Wes, Inc., and that the firm has been retained to prepare an engineering statement on behalf of Pappas Telecasting of America.

All facts contained herein are true to my knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. All Exhibits were prepared by me or under my supervision. I declare under penalty of perjury that the foregoing is true and correct.



Keith J. Leitch

Executed on the 12th day of July, 2000

Narrative Statement

I. GENERAL

This engineering report has been prepared on behalf of Pappas Telecasting of America in support of its request for NTSC Channel 56 in New Castle, Pennsylvania.

II. ENGINEERING DISCUSSION

The applicant originally filed a petition for rule-making for New Castle, Pennsylvania on July 22nd 1996. This new engineering statement demonstrates that Channel 56 for New Castle, Pennsylvania will not cause interference to digital television above the Commission's guidelines.

The applicant proposes the following site:

North Latitude: 40° 59' 58"
West Longitude: 79° 59' 31"

It is proposed to amend Section 73.606(b) of the Commission's rules, NTSC Table of Allotments, to allot Channel 56 (722-728 MHz) for the NTSC television operation of Pappas Telecasting of America. As demonstrated below, the proposed Channel 56 NTSC operation at New Castle, Pennsylvania would not cause any harmful interference to any other analog NTSC or DTV station or allotments exceeding the Commission's guidelines. New Castle, PA Channel 56 would provide additional service to a population of 3,309,245 people.

The proposed NTSC Channel 56 has site availability and can operate from the proposed antenna site with 1,000 kW omni-directional ERP and 339 meters HAAT (RC-AMSL of 728 meters) without adversely impacting other TV operations. The proposed Channel 56 would serve all of New Castle, Pennsylvania inside its 80 dBu contour.

Analog NTSC TV Allocation Situation

The attached Exhibit RM-1 demonstrates that Channel 56, New Castle, PA, is short-spaced to two NTSC stations. The applicant is spaced 61.5 kilometers from Channel 49 WNPA in Jeannette, PA, a short spacing of 34.2 kilometers. Interference on a +7 taboo is only to the channel that is seven channels above the other. Therefore, there would not be any interference to Jeannette, PA. The applicant willingly accepts any interference there may be, albeit very small or non-existent. Actual waivers for severely spaced +7s have proved to have indiscernible interference. The applicant also has an insignificant short-spacing of 0.8 kilometers to an application for Youngstown, OH Channel 58, a +2 taboo. At one mega-watt E.R.P and a HAAT of 339 meters the applicant more than provides equivalent protection to Youngstown, OH.

Class A Situation

A complete study of all Class A LPTV stations has been conducted. New Castle Channel 56 causes no interference to any class A stations.

DTV Allocation Situation

The applicant has made use of the Commission's own Fortran Longley-Rice program in conducting its interference studies to digital television. The applicant has included a spacing study to all digital stations within 429 kilometers that require further study to determine whether or not they will receive interference from the proposed channel 56 in New Castle, Pennsylvania (see Exhibit RM-2). Of the eight stations studied, we have included the Fortran Longley-Rice interference studies to the two short-spaced stations, Steubenville, Ohio, digital channel 57 and Pittsburgh, Pennsylvania, digital channel 48. As demonstrated in exhibit FLR-1, Steubenville, Ohio, digital channel 57 receives 0.46% population loss. Any amount less than 0.5% is considered negligible and therefore constitutes no population loss by the FCC. Pittsburgh digital channel 48 receives no population loss to New Castle, Pennsylvania, as demonstrated in Exhibit FLR-2. No other digital stations receive any interference from the proposed NTSC channel 56 at New Castle, Pennsylvania.

III. Summary

The applicant filed a petition for rule-making to add channel 56 to New Castle, PA on June 23, 1996. A Channel 56 in New Castle will not cause any interference to any NTSC stations or Class A stations and less than 0.5% interference to any Digital stations.

**Exhibit RM-1
New Castle, PA**

July 12, 2000

by WES, Inc. Broadcast Consultants

Spacing study to Digital TV on channel 56

***** TV CHANNEL SPACING STUDY *****

Job title: New Castle, PA

Latitude: 40 59 58

Channel: 56

Longitude: 79 59 31

Database file name: tv000117.edx

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
49	WNPA	2157	JEANNETTE	PA	1		177.8	61.5	95.7	-34.2
53+	WPGHTV	2516	PITTSBURGH	PA	1	L	181.1	56.0	31.4	24.6
53+	WPGHTV	2517	PITTSBURGH	PA	1	C	181.1	56.0	31.4	24.6
56-	ALLOTM	2543	NEW CASTLE	PA	1	A	294.2	7.4	248.6	
58o	NEW	2545	YOUNGSTOWN	OH	1	A	347.2	30.6	31.4	-.8
56+	CBLNTV	2570	KITCHENER	ON	1	L	351.7	254.0	248.6	5.4
56+	NEW	3526	COLUMBUS	OH	1	A	247.0	281.6	248.6	33.0

***** End of channel 56 study *****

**Exhibit RM-2
New Castle, PA
July 12, 3000**

**Digital Spacing Study
by WES, Inc. Broadcast Consultants**

Study Location:
New Castle, PA Channel 56

NTSC Study Station, Transmitter Coordinates: 40-59-58 N 79-59-31 W

Study distance: 429 km

NTSC TO DTV STUDY RESULTS

City of License	ST	Chan	Bearing	Distance	Req. Dist	Diff.
Hagerstown	MD	55	130.83	227.55	88.50	139.05
Akron	OH	59	273.07	134.00	80.50	53.50
Bowling Green	OH	56	272.66	329.37	217.30	112.07
Steubenville	OH	57	204.63	83.20	88.50	-5.30
Erie	PA	52	359.46	118.29	80.50	37.79
Erie	PA	58	356.82	115.74	80.50	35.24
Pittsburgh	PA	48	181.06	59.54	80.50	-20.96
Lynchburg	VA	56	175.68	410.26	217.30	192.96

Station is short-spaced to 2 stations.

**Exhibit FLR-1
New Castle, PA
June 22, 2000**

**Fortran Longley-Rice Interference Study
by WES, Inc. Broadcast Consultants**

Study not including New Castle, PA Channel 56:

Run begins Thu Jun 22 18:31:33 1998, host providence		
Analysis of: 57A OH STEUBENVILLE		
HAAT 251.0 m, ATV ERP 210.0 kW		
	POPULATION	AREA (sq km)
within Noise Limited Contour	2741444	18147.0
not affected by terrain losses	2674416	17616.9
lost to NTSC IX	0	0.0
lost to additional IX by ATV	19	8.0
lost to ATV IX only	19	8.0
lost to all IX	19	8.0
Finished Thu Jun 22 18:34:58; run time 0:03:08		
7684 calls to Longley-Rice; path distance increment 1.00 km		

Study with New Castle, PA Channel 56 added at 1MW:

Run begins Thu Jun 22 18:53:26 1998, host providence		
Analysis of: 57A OH STEUBENVILLE		
HAAT 251.0 m, ATV ERP 210.0 kW		
	POPULATION	AREA (sq km)
within Noise Limited Contour	2741444	18147.0
not affected by terrain losses	2674416	17616.9
lost to NTSC IX	12657	64.3
lost to additional IX by ATV	19	8.0
lost to ATV IX only	19	8.0
lost to all IX	12676	72.3
Finished Thu Jun 22 18:56:51; run time 0:03:14		
9537 calls to Longley-Rice; path distance increment 1.00 km		

**Exhibit FLR-2
New Castle, PA
June22, 2000**

**Fortran Longley-Rice Interference Study
by WES, Inc. Broadcast Consultants**

Study not including New Castle, PA Channel 56:

Run begins Thu Jun 22 17:32:25 2000, host providence
Analysis of: 48A PA PITTSBURGH
HAAT 289.0 m, ATV ERP 501.0 kW

	POPULATION	AREA (sq km)
within Noise Limited Contour	3193350	23756.3
not affected by terrain losses	3108986	22401.8
lost to NTSC IX	16	4.0
lost to additional IX by ATV	144	8.0
lost to ATV IX only	160	12.0
lost to all IX	160	12.0

Finished Thu Jun 22 17:38:14; run time 0:04:36
13052 calls to Longley-Rice; path distance increment 1.00 km

Study with New Castle, PA Channel 56 added at 1MW:

Run begins Thu Jun 22 17:21:37 2000, host providence
Analysis of: 48A PA PITTSBURGH
HAAT 289.0 m, ATV ERP 501.0 kW

	POPULATION	AREA (sq km)
within Noise Limited Contour	3193350	23756.3
not affected by terrain losses	3108986	22401.8
lost to NTSC IX	16	4.0
lost to additional IX by ATV	144	8.0
lost to ATV IX only	160	12.0
lost to all IX	160	12.0

Finished Thu Jun 22 17:27:33; run time 0:04:42
13052 calls to Longley-Rice; path distance increment 1.00 km



Federal Communications Commission
Washington, D.C. 20554

May 31, 1996

1800E-1DOB

Montgomery County Media Network, Inc.,
d/b/a Imagists
c/o James L. Oyster, Esq.
108 Oyster Lane
Castleton, Virginia 22718

Re: KHIM(TV), BPCT-951026KE
Conroe, Texas

Dear Applicant:

This is in reference to the above-captioned application for a construction permit to change the transmitter site for Station KHIM(TV), Channel 55, Conroe, Texas. Your proposed transmitter site is 85.3 km away from Station KTMD(TV), Channel 48, Galveston, Texas. Sections 73.610 and 73.698 of the Commission's Rules requires a minimum separation distance of 95.7 km between KHIM(TV) and KTMD(TV). Hence, your proposal would create a short spacing of 10.4 km to KTMD(TV). Accordingly, you have requested a waiver of Sections 73.610 and 73.698 of the Rules with respect to the local oscillator "UHF taboo" spacing requirements.

In support of your request, you state that your authorized transmission site is under new ownership and is no longer available to you. You further indicate that the area where your existing site is located has been designated as a "flood way" and all similar potential fully spaced sites are located in the same "flood way" where construction would not be permitted. You point out that in addition to this limitation on suitable sites, the FAA has placed considerable restrictions on new tower construction in light of the proximity of this area to the Houston, Texas airport. In fact, you assert it was an FAA suggestion of co-locating with another station that led you to discovering the instant site approved for Station KKHT (FM) Conroe, Texas.

You indicate that operation from this site will allow you to increase your proposed service to more than 2 million viewers, for a total population of 3,827,788 within your Grade B service contour. You further indicate that there will be no loss in service to any viewers predicted to receive your signal under your original construction permit.

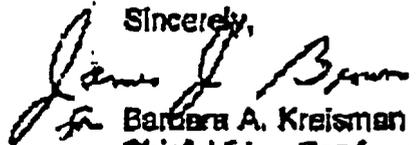
With regard to the potential for interference, you point out initially that interference would only occur to the higher channel. Thus, since the station you are short-spaced to, KTMD(TV), is on the lower channel (Channel 48), KTMD(TV)'s viewers would not

receive any interference. Any potential interference would be caused to your facility. Furthermore, you state that although there are approximately 200,000 people in your gain area who could potentially receive interference, you expect very few (less than 200) viewers to actually receive any interference, due in large part to the increased antenna height proposed for Station KHIM(TV) and the fact that television receivers manufactured in the last twenty years have tuning circuitry that is immune to this type of interference (local oscillator) that Section 73.698 seeks to prevent.

After a review of your application and an analysis of your engineering showing, we are persuaded that grant of your waiver request would serve the public interest. While the degree of short spacing is not minor, (6.4 miles), it appears that the strength of KHIM's proposed signal is likely to substantially abate the potential for the station to experience local oscillator interference. Furthermore, any interference that might occur would affect less than 200 persons. However, none of these individuals were predicted to receive service from the original KHIM(TV) construction permit. Moreover, this propose would allow you to provide service to an additional 2,000,000 people without any loss of service compared to your original authorization.

Accordingly, for the reasons stated above, your request for waiver of Sections 73.610 and 73.698 IS GRANTED and your application for construction permit to change the station's facilities IS GRANTED.

Sincerely,



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

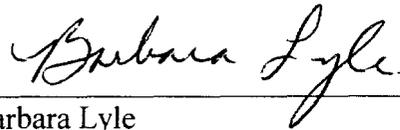
cc: James L. Oyster, Esq.

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 17th day of July, 2000, copies of the foregoing "Amendment to Petition for Rulemaking" were hand delivered to the following:

Mr. Roy J. Stewart
Chief, Mass Media Bureau
Federal Communications Commission
The Portals II, Room 2-C347
445 Twelfth Street, S.W.
Washington, DC 20554

Mr. Keith Larson
Assistant Chief, Engineering
Mass Media Bureau
Federal Communications Commission
The Portals II, Room 2-C420
445 Twelfth Street, S.W.
Washington, DC 20554



Barbara Lyle