

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Unlicensed Operation in the TV Broadcast Bands) ET Docket No. 04-186
)
)

To: Marlene Dortch, Secretary
Attn: Chief, Office of Engineering and Technology

COMMENTS

Newport Television License LLC (“Newport”) respectfully submits these comments in connection with its April 5, 2011 request that the Commission grant a waiver of Section 15.712(b) of the Commission’s rules and permit registration of the K28EA-D, Washington, UT, receive site in the television bands database(s).¹ K28EA-D receives a signal from a distant translator and is located more than 80 kilometers from the protected contour of the received station. A waiver is therefore necessary to secure protection for this site from interference caused by the operation of unlicensed white spaces devices.

I. THE COMMISSION’S LIST OF ELIGIBLE RECEIVE SITES IS INCOMPLETE.

The Office of Engineering and Technology (“OET”) appears to have inadvertently omitted K28EA-D from the receive sites it listed in Appendix A of the *Public Notice*.² The OET states that its Appendix A table is intended to include “all the sites that were listed in the waiver requests and that are more 80 km outside the protected contour of the TV

¹ See Public Notice, “Office of Engineering and Technology Seeks Comment on Requests for Waiver of Section 15.712(b) to Register Certain TV Receive Sites in the TV Bands Database,” DA 11-2086 (Dec. 28, 2011) (“*Public Notice*”).

² *Id.* at Appendix A.

stations being received.”³ However, the table in Appendix A excludes K28EA-D, which was the subject of an April 5, 2011 Waiver Request filed by Newport and which is located more than 80 km outside the protected contour of the TV station being received. As explained in the August 19, 2011 Supplement to Waiver Request filed by Newport, K28EA-D receives a signal from TV translator station K18FU-D. K18FU-D, in turn, receives and retransmits the signal of KTVX, Salt Lake City, Utah, but it is the signal of K18FU-D and not KTVX on which K28EA-D relies. Accordingly, it is K18FU-D’s signal contour which should be used as the basis for calculating the distance from K28EA-D to the protected contour of the received station. Newport calculates that K28EA-D is located approximately 113 kilometers from the protected contour of K18FU-D.⁴

II. GRANT OF NEWPORT’S WAIVER REQUEST IS IN THE PUBLIC INTEREST.

Section 1.3 of the Commission’s rules provides for waiver “for good cause shown,” and the Commission has recognized that its rules may be waived “where the particular facts make strict compliance inconsistent with the public interest.”⁵ Permitting registration of the K28EA-D receive site would be in the public interest, and there is good cause to waive Section 15.712(b) and permit this site to register in the TV Bands databases(s). As described in Newport’s April 5, 2011 Waiver Request, the K28EA-D receive site is used to retransmit programming originated on KTVX, Salt Lake City, Utah. This signal includes ABC network

³ *Id.* at 3.

⁴ The NAD27 coordinates for K28EA-D’s receive site are: latitude 38 degrees, 31 minutes, 14 seconds; longitude 113 degrees, 17 minutes, 12 seconds.

⁵ See 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); and *Request for Waiver of the Decision of the Universal Service Administrator by Douglas-Omaha Tech. Comm’n, Omaha, Nebraska*, Order, 21 FCC Rcd 9277, at para. 5 (2006). See also *id.* (“waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule”).

programming, syndicated programming, sports, local news and public affairs coverage, information on weather and on emergencies, and more.

Without a waiver in order to register this receive site for protection from interference caused by unlicensed white spaces devices, viewers in the Washington, Utah community — and there are approximately 200,466 such viewers — would be at risk of losing all of this important programming. Moreover, given the remote location of this site, grant of this waiver request should not unduly constrain the channels on which unlicensed white space devices could operate.⁶

⁶ Indeed, the Commission itself has opined that waivers should not affect the availability of channels for TV white space devices, given that these facilities “are generally in remote areas where many channels will be available for white space devices.” *Second Memorandum Opinion and Order*, ET Docket Nos. 04-186 and 02-380, 25 FCC Rcd 18661, at para. 42 (rel. Sept. 23, 2010).

For the foregoing reasons, grant of the waiver request submitted by Newport would be in the public interest.

Respectfully submitted,

Newport Television License LLC

By: _____

Mace Rosenstein
Elizabeth Canter
Eve R. Pogoriler

Covington & Burling LLP
1201 Pennsylvania Avenue NW
Washington, D.C. 20004-2401
(202) 662-6000

Its Counsel

January 30, 2012

cc: Aole Wilkins, OET (by e-mail)
Best Copy and Printing, Inc. (by e-mail)