



Federal Communications Commission
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1800E3-JLB

Madison Halsted LLC
Cohn & Marks, LLP
J. Bryan Boice, Esq.
1920 N Street, N.W.
Suite 300
Washington, D.C. 20036

KM LPTV of Chicago-13, LLC and
KM LPTV of Chicago-28, LLC
c/o Jeffrey L. Timmons, P.C.
3235 Satellite Boulevard
Building 400, Suite 300
Duluth, Georgia 30096-8688

Re: WOCK-CA and WOCH-CA, Chicago, Ill.
File Nos. BPTVA-20050127ALO and
BPTTA-20050127ALH
Facility ID Nos. 35092 and 35101

Gentlemen:

This is with respect to the above-referenced applications for minor changes in the licensed facilities of Class A Television Stations WOCK-CA and WOCH-CA, Chicago, Illinois.¹ Madison Halsted LLC (Madison), which has an ownership interest in the licensees of Class A Television Station WMLW-CA, Milwaukee, Wisconsin, and Station WCIU-TV, Chicago, Illinois, filed an objection to grant of these applications, to which KM responded.²

By Public Notice released August 3, 2004,³ the Media Bureau announced that effective immediately, and until further notice, it would not accept for filing certain requests by analog and digital television broadcast stations for changes in their existing service areas and channels. Included in this freeze are Class A displacement and modification applications "that would serve any area that is not already served by that Class A station's authorized facilities." The Bureau explained that a freeze was necessary to ensure a stable television database prior to the commencement of the DTV channel election process set out in the Commission's *Second*

¹ We will refer to the licensees of both stations as KM.

² While Madison called its objection a petition to deny, petitions to deny do not lie against Class A minor change applications. Thus, we will treat its filing as an informal objection.

³ *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, DA 04-2446, released August 3, 2004 (*Freeze Notice*).

*Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television.*⁴ It further stated that:

The Bureau will consider, on a case-by-case basis, requests for waiver of this freeze when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as when zoning restrictions preclude tower construction at a particular site or when unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site.

The facilities proposed in KM's applications would result in a 34% increase in the service area of WOCH-CA, and a 15% increase in the service area of WOCK-CA. Accordingly, KM has requested a waiver of the freeze, which Madison opposes.

KM's waiver request is denied. In the *Freeze Notice*, the Bureau clearly indicated that waivers would be entertained in only limited circumstances, when a station's tower was no longer unavailable, and when technical changes were necessary for the station to continue to provide service to the public. That is not the case here. KM's stations are presently operating using antenna mounted on the John Hancock building in Chicago, and KM proposes to make technical changes to both facilities and to relocate WOCK-CA from the East Tower to the West Tower of the building. According to KM, the sole purpose of these changes is to improve the reception of the stations within their current service area. This voluntary decision by KM, however, does not meet the *Freeze Notice* waiver criteria, which requires the existence of reasons outside of the station's control.⁵ We also disagree with KM that granting a waiver would not disserve the policy reasons for the freeze. The Commission has not yet completed the multi-step channel election and repacking process through which broadcasters will elect their ultimate DTV channel within the core television spectrum. Thus, the need for a stable data base remains compelling. We also note that there are still approximately one hundred television stations which do not yet have a tentative channel designation, including several located within 250 miles of Chicago, and grant of the KM modification applications might affect these stations' channel election options.

Although we cannot grant KM's modification applications for changes in its licensed Class A television facilities, given the fact that stations participating in the channel election process would be required to protect the modified facilities, we will grant the applications if KM amends to change the classification of the proposed facilities from Class A to low power television service. Low power television stations and television translator stations were not subject to the freeze, because they are a secondary service. In addition, we find that the modification applications comply with all of the technical and interference protection requirements in Part 74 of the Rules.

⁴ 19 FCC Rcd 18279 (2004) (*Second Periodic Review*).

⁵ In the *Second Periodic Review*, the Commission also stated that the freeze would not prevent licensees from filing modification applications when the station seeks a new tower site due to the events of September 11, 2001.

In view of the foregoing, KM's request for a waiver of the current filing freeze with respect to the above-referenced applications IS DENIED and Madison's objection IS GRANTED. KM is authorized to file amendments, consistent with our decision. Otherwise, the above-referenced applications will remain pending until such time as the freeze is lifted, or a circumstance arises which would justify a waiver.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau