



Federal Communications Commission
Washington, D.C. 20554

DA 06-923

April 24, 2006

Waller, Inc.
c/o Kenneth E. Hardman, Esq.
2154 Wisconsin Avenue, N.W.
Suite 250
Washington, D.C. 20007-2280

Re: WPWV537, Bruce, MS
ULS File No. 0002397384

Dear Mr. Hardman:

On December 1, 2005, you filed on behalf of Waller, Inc. (Waller), licensee of station WPWV537 in the Mississippi 4-Yalobusha CMA 496, a Form 601 application for station modification seeking authorization to operate a wireless broadband service on TV Channels 54 and 59 in the Bruce, MS area.¹ Waller's application incorporates broadcaster consent, pursuant to section 27.60(b)(1)(iv) of the Commission's rules. This section permits licensees in the 700 MHz Band to obtain the written concurrence of a co-channel or adjacent channel TV/DTV broadcaster, whereby the incumbent broadcaster consents to accept higher levels of interference than the rule otherwise permits, subject to Commission approval.²

Waller's application includes a copy of the consent agreement with WMAE-DT, part of the Mississippi Authority of Educational Television (ETVAM) and licensee of adjacent DTV Channel 55 in Booneville, MS. Broadcaster consent regarding Waller's proposed mobile operation on adjacent Channel 54 is based on the understanding that: (1) Waller's low-power mobile deployment is designed to minimize interference to the broadcaster's service; (2) interference is not likely to occur; and (3) Waller promises to cure at its own expense any actual interference that may occur.³ Further, Waller notes in its application that, even if interference were to occur, it would be in a market where the entire viewing population receives at least one other DTV station broadcasting the exact same ETVAM content.⁴

¹ The application was amended, under the same ULS file number, on February 7, 2006.

² This approval process involves an analysis by the Media Bureau, under delegated authority, to determine whether grant of the application is in the public interest. *See* Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845 (2000) (basis for public interest analysis of Lower 700 MHz consent agreements); Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, *Report and Order*, 17 FCC Rcd 1022 (2002) (framework for public interest analysis of Lower 700 MHz "band-clearing" agreements) ("*Lower 700 MHz Report and Order*").

³ *See* Technical Statement, Exhibit 2 to Form 601, WPWV537, Bruce, MS, Waller, Inc., ULS File No. 0002397384 (filed Dec. 15, 2005).

⁴ *See* Additional Technical Information, Exhibit 11 to Form 601, WPWV537, Bruce, MS, Waller, Inc., ULS File No. 0002397384 (filed Feb. 7, 2006).

For the reasons discussed below, we find that grant of the application is in the public interest. First, our approval of the application will allow Waller to provide a widely accessible wireless broadband service to business, residential and campus customers in a rural area. Second, Waller maintains that its proposed operation will not cause interference to viewers of WMAE-DT on Channel 55 within the area for which the station is entitled to protection. Waller and ETVAM agree that the potential for interference is very minimal because Waller's base station operation is not adjacent to Channel 55 and the adjacent channel mobile units are very low-power. Should limited interference occur, Waller has agreed to be solely responsible for correcting interference "regardless of causation unless Waller is able to clearly demonstrate to the satisfaction of [WMAE-DT] that its operations are not the cause of the interference."⁵ If Waller is unable to meet this requirement and interference continues, Waller has agreed that it "will immediately cease its operations until a permanent solution is developed."⁶ In addition, although WMAE-DT is the sole television station licensed in Booneville, MS, should interference occur, the entire viewing population located there and in the area in which WMAE-DT is entitled to protection receives at least one alternate ETVAM station that transmits exactly the same programming as WMAE-DT.⁷ Finally, WMAE-DT will continue to place a 48 dBu contour over its community of license as required by the Commission's rules.⁸

Accordingly, we believe that the public interest will be served by a grant of Waller's application, conditioned upon operating within the technical parameters specified in the application, and in accordance with Waller's consent agreement with station WMAE-DT regarding operation in Bruce, MS.

Sincerely,

Barbara A. Kreisman, Chief
Video Division
Media Bureau

Roger S. Noel, Chief
Mobility Division
Wireless Telecommunications Bureau

⁵ See Letter from WMAE-TV and Waller, Inc. to Marlene H. Dortch, Secretary, FCC, Exhibit 10 to Form 601, WPWV537, Bruce, MS, Waller, Inc., ULS File No. 0002397384 (filed Nov. 14, 2005).

⁶ *Id.*

⁷ We note also that WMAE-DT has selected DTV Channel 12 as its in-core channel for DTV service after the transition. Therefore, any potential for interference will be eliminated at the conclusion of DTV transition when WMAE-DT will be operating on DTV Channel 12.

⁸ See 47 C.F.R. § 73.625(a).