



Federal Communications Commission
Washington, D.C. 20554

February 27, 2015

Sally A. Buckman, Esq.
Lerman Senter PLLC
2000 K Street, NW Suite 600
Washington, DC 20006

Re: Application to Modify Facilities of Station KGUN-TV, Tucson, Arizona
Fac. ID No. 36918 (File No. BMPCDT-20090918ABY)

Dear Ms. Buckman:

We write in response to your letter dated February 23, 2015 regarding the above captioned modification application of television station KGUN-TV ("KGUN"), Tucson, Arizona. For the reasons set forth below, we grant Journal Broadcast Corporation ("Journal"), licensee of KGUN, repacking protection and waiver of the limitations on processing of modification applications imposed in the April 5, 2013 Public Notice.¹

In 2009, following the DTV transition, Journal filed a modification application requesting authority to increase station KGUN's operating power to mitigate reception problems it was experiencing. Processing of Journal's modification application was delayed due to factors beyond its control and is now subject to the limitations in the Freeze Notice. In the Freeze Notice, the Commission said it would consider requests for waiver when a modification application "is necessary or otherwise in the public interest...."² Following the DTV transition in 2009, Journal made several attempts to resolve the VHF reception issues it was experiencing, including filing a digital flashcut application for a translator it operated and requesting an STA to initiate digital operations on the translator as soon as possible. Journal also filed its above referenced modification application in September 2009. Processing of this application was delayed for two reasons beyond Journal's control. First, the application was mutually exclusive with a Petition for Rulemaking filed by KM Television Flagstaff, L.L.C. for station KCFG(TV), Flagstaff, Arizona. Following receipt of a letter from the Media Bureau in October 2011, the parties executed an Interference Acceptance Agreement on March 13, 2012, thereby resolving the issue. Second, Journal's modification application required concurrence from Mexico due to the proximity of Tucson to Mexico. Mexican concurrence was not received until July 3, 2013, after the Freeze Notice took effect. At that time, KGUN's application, which was filed in 2009, could not be granted.

Journal, on behalf of KGUN, took all of the necessary steps to mitigate its reception problems following the DTV transition. Because of this—and considering both the fact that the processing of its application was delayed for years due to extraordinary circumstances beyond its control, and the impact on existing viewership—we conclude that waiving the limitations in the Freeze Notice and granting

¹ See FCC Public Notice, *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications*, 28 FCC Rcd 4364 (MB 2013) ("Freeze Notice").

² Freeze Notice, 28 FCC Rcd at 4365.

KGUN's modification application is warranted and comports with the public interest.³ In addition, we will protect the proposed modified facilities as we do not believe that these facilities will have an adverse impact on auction-related repacking flexibility.

ACCORDINGLY, IT IS ORDERED, that the modification application filed by Journal Broadcast Corporation, on behalf of KGUN-TV, Tucson, Arizona, File No. BMPCDT-20090918AB, is GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara Kreisman', written over a horizontal line.

Barbara Kreisman
Chief, Video Division
Media Bureau

³ With this letter, we dismiss as moot Journal's Petition for Reconsideration of the following Commission *Report and Order*. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014).