

Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
WLNY-TV INC., NEW YORK)	File No. BDFCDTL-20130603AUD
)	
Request for Waiver of Section 74.709 of the)	
Commission’s Rules)	
)	

ORDER

Adopted: October 2, 2014

Released: October 2, 2014

By the Deputy Chief, Video Division, Media Bureau, and the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. WLNY-TV Inc. (WLNY) filed an application and an associated waiver request,¹ “to flashcut from analog channel 17 to digital channel 17” for low power television (LPTV) station WLIG-LP, Plainview, NY.² Specifically, WLNY seeks waiver relief, pursuant to Section 74.709 of the Commission’s rules,³ for “land mobile station protection insofar as that rule applies to the channel 16 land mobile services in New York, NY.”⁴ For the reasons stated below, we grant WLNY’s Waiver Request as conditioned herein.

II. BACKGROUND

2. WLNY states that “WLIG-LP has been operating on analog channel 17 since 2005.”⁵ WLNY affirms that “during its nine years of operation, there have been no interference complaints by any users of the adjacent channel 16 spectrum or any other indication of interference.”⁶ WLNY further states that “a grant of the WLIG-LP digital channel 17 proposal will afford the channel 16 land mobile service significantly more interference protection” than the current analog channel 17 operation.⁷

¹ See File No. BDFCDTL-20130603AUD (filed June 04, 2013, amended, June 17, 2014, https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101641338&formid=346&fac_num=9378). See also attachment 12: Further Statement in Support of Waiver Request and Grant of Application (Waiver Request) and Clarification of Further Statement in Support of Waiver Request and Grant of Application (Clarification Request).

² Waiver Request at 1.

³ 47 C.F.R. § 74.709.

⁴ Waiver Request at 1.

⁵ *Id.*

⁶ *Id.*

⁷ See *id.*

3. Specifically, WLNY states that “in actuality the flashcut to digital channel 17 with a full service mask filter together with the existing multi-section filter now used by the station, will dramatically decrease out-of-band emissions to the adjacent channel 16 spectrum and will afford the channel 16 land mobile service significantly greater protection against interference than currently exists.”⁸

4. WLNY asserts that “FCC rules recognize that the out-of-band emissions 3 MHz from the LPTV channel band edge in the land mobile band are reduced 76 dB for digital LPTV operations compared to 60 dB for analog LPTV operations – a further reduction of 16 dB.”⁹ Further, WLNY states that “if we consider the current analog radiated power of the LPTV station in the land mobile spectrum to be 100%, the proposed change to digital will reduce that radiated power to 2.5%”.¹⁰ It maintains that the “decrease in emissions will provide the land mobile service significantly greater interference protection than that which exists based on WLIG-LP’s current analog operation.”¹¹

5. WLNY concludes that granting its proposal “will enhance the interference protection for the channel 16 land mobile service [and therefore] has no downside and is risk-free for all parties.”¹² WLNY asserts that “if interference ever occurs, WLIG-LP, as a secondary service, will be required to eliminate the interference or cease operations” and that “FCC can condition the WLIG-LP construction permit to require the station to 1) eliminate interference or cease operation should interference ever occur and 2) install and operate with a full service mask filter and multi-section filter.”¹³

6. In support of its waiver request, WLNY submitted, an engineering analysis (Exhibit 13) which indicates that “the proposed WLIG-LP digital facility is identical [to] its licensed analog facility in terms of frequency, ERP, antenna system and site location.”¹⁴

7. On July 16, 2014, the Media Bureau and Public Safety and Homeland Security Bureau (the Bureaus) issued a public notice¹⁵ seeking comment on the application and Waiver Request. While no third parties filed comments in response to the *Public Notice*, WLNY filed comments reiterating its request for the waiver.¹⁶

III. DISCUSSION

8. To obtain a waiver of the Commission’s rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the

⁸ *Id.*

⁹ Clarification Request at 1. *See also* 47 C.F.R. §§ 74.736(c)(3) [analog] and 74.794(a)(2)(ii) [digital].

¹⁰ Clarification Request at 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* *See also* Waiver Request at 1.

¹⁵ *See* Media Bureau and Public Safety and Homeland Security Bureau Seek Comment On Request For Waiver Filed By WLNY-TV INC. To Flashcut From Analog TV Channel 17 To Digital TV Channel 17 for LPTV WLIG-LP, Plainview, New York, *Public Notice*, 29 FCC Rcd 8344 (MB, PSHSB 2014) (*Public Notice*).

¹⁶ *See* Comments of WLNY-TV., Inc. (dated: July 28, 2014) (Comments of WLNY).

present case, and that a grant of the waiver would be in the public interest;¹⁷ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁸ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁹ Based on the information before us, we find that WLNY satisfies the Commission's general waiver standard. We find that grant of the application is in the public interest and a grant of the Waiver Requests is warranted.

9. *Section 74.709.* Section 74.709 requires that a low power TV or TV translator station application will not be accepted if it specifies a channel that is one channel above or below one of the land mobile assignments and its field strength at the land mobile protected contour exceeds 76 dBu.²⁰ Station WLIG-LP is located within the land mobile protected contour. WLNY states that it “sought a waiver of section 74.709 of the FCC rules (land mobile interference protection) based upon the showing that the conversion to digital channel 17 would advance the objective and purpose of the rule, *i.e.*, to protect the land mobile service against interference from the LPTV service.”²¹ WLNY further states that “[t]he objective of section 74.709 – to prevent interference – would be satisfied because the digital channel 17 operation, as proposed, will actually afford the channel 16 land mobile service interference protection”²² as compared to the current WLIG-LP’s analog operation.²³ Staff from the Bureaus have reviewed WLNY’s technical analysis and confirmed that the location will not change and that the power and antenna height will not increase. Therefore, we agree with WLNY to the extent that the WLIG-LP digital operation will not increase the potential for interference to Channel 16 Private Land Mobile Radio operations relative to the current analog operation, which, to our knowledge, has elicited no interference complaints by any users of adjacent channel 16 spectrum during nine years of operation. Therefore, we conclude that the underlying purpose of Section 74.709 would not be served by application to the present case.

10. *Public Interest.* We find, overall, that the public interest will be served by grant of the waiver request and the associated application. WLNY concludes that granting its proposal “will enhance the interference protection for the channel 16 land mobile service [and therefore] has no downside and is risk-free for all parties.”²⁴ WLNY argues that “if interference ever occurs, WLIG-LP, as a secondary service, will be required to eliminate the interference or cease operations” and that “FCC can condition the WLIG-LP construction permit.”²⁵ According to WLNY, “[t]here are no countervailing downsides

¹⁷ 47 C.F.R. § 1.925(b)(3)(i).

¹⁸ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁹ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

²⁰ 47 C.F.R. § 74.709(d)(3). The protected contours for the land mobile radio service are 130 kilometers from the coordinates in the table in paragraph (a). 47 C.F.R. § 74.709(b).

²¹ Comments of WLNY at 1.

²² *Id.* at 2.

²³ Clarification Request at 1.

²⁴ *Id.*

²⁵ *Id.*

associated with a grant of [its] application.”²⁶ As the LPTV stations are required to convert to digital broadcasting by September 1, 2015, grant of this application will give an opportunity for this station to start digital broadcasting which in turn will provide a good quality signal to the public compared to analog broadcasting. Therefore, we find it in the public interest to permit WLNY to flashcut from analog channel 17 to digital channel 17.

IV. CONCLUSION

11. Based on the record before us, we grant WLNY’s request for waiver subject to the following conditions:

- (i) WLNY shall eliminate interference or cease operation should interference ever occur to the channel 16 land mobile services in New York, NY.
- (ii) WLNY shall install and operate with a full service mask filter and multi-section filter.²⁷

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3)(i) of the Commission’s rules, 47 C.F.R. § 1.925(b)(3)(i), that the Waiver Request associated with application File No. BDFCDTL-20130603AUD filed by WLNY-TV Inc. on June 04, 2013, as amended, IS GRANTED, subject to the conditions specified herein.

13. IT IS FURTHER ORDERED that application File No. BDFCDTL-20130603AUD SHALL BE PROCESSED consistent with this *Order* and the Commission’s rules.

14. We take this action under delegated authority pursuant to Sections 0.61, 0.191, 0.283, and 0.392 of the Commission’s rules, 47 C.F.R. §§ 0.61, 0.191, 0.283, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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²⁶ *Id.*

²⁷ *See Id.*