Preliminary Statement of Compliance With Burden of Proof

The Applicant is seeking relief from the Board of Zoning Adjustment (the "Board"), pursuant to Section 211 of the Zoning Regulations, to continue usage of a commercial broadcasting tower on the Subject Property. The Applicant will establish through its Statement of the Applicant to be filed no fewer than fourteen days prior to the hearing on the subject application, as well as at the public hearing, that the subject application meets the burden of proof for the granting of the requested relief. A preliminary summary of how the application meets the required burden of proof follows.

I.
Background

The Subject Property is located on the east side of Nebraska Avenue between Massachusetts Avenue to the south and Upton Street to the north. The Subject Property is zoned R-1-B and is currently used as a commercial broadcasting facility with two broadcasting towers and on-site parking.

To the south of the Subject Property are the U.S. Department of Homeland Defense offices. The National Presbyterian Church headquarters and school facilities are to the north of the Subject Property. To the east of the Subject Property is Glover-Archbold Park followed by property in the C-3-A district and the McLean Gardens residential development in the R-5-A District fronting on Wisconsin Avenue.

Beginning in 1955, the Board granted the Applicant permission to operate a broadcast studio office building with an antenna tower and parking. After the initial 1955 approval, the Applicant filed a series of applications with the Board to make various changes at the Subject Property, including permission to replace the original tower with a new one. The Applicant constructed a new tower in 1998 and continued to use the original tower. In 1992, the Applicant applied for special exception approval to continue usage of the original tower. By final order dated January 21, 2004, the Board granted the Applicant's request, subject to a number of conditions, including a condition that approval shall be until December 1, 2004. See Board of Zoning Adjustment Order No. 15708-A, dated January 21, 2004.

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II.
Burden of Proof for Special Exception

Pursuant to Section 211 of the Zoning Regulations, the Board may permit the use of commercial broadcast antenna subject to the nine conditions which are discussed below. Moreover, the Board is authorized to grant special exceptions as provided in the Zoning Regulations where, in the Board's judgment, two general tests are met, and the conditions of the particular exception are met. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning regulations and Zoning Map." 11 DCMR § 3104.1.

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A. Compliance with Section 211

Section 211 of the Zoning Regulations provides that the Board may permit the use of commercial broadcast antenna subject to a number of conditions. As discussed below, the Applicant meets each of these conditions, and thus satisfies the requirements of Section 211.

1. *The proposed location, height, and other characteristics of the antenna shall not adversely affect the use of neighboring property.*

The 1955 tower is setback from the lot lines and neighboring properties a substantial distance. The tower is setback approximately 600 feet from Nebraska Avenue and approximately 200 feet from the Glover-Archbold Park. The height of the tower is much less than that permitted under the Board's previous master plan approval. The continued use of the tower will not result in an increase in office space, number of employees, vehicular or pedestrian traffic, interference with existing radio frequencies, or the establishment of other commercial uses on the Subject Property. Thus, the continued use of the tower will not adversely affect the use of neighboring property.

2. *The antenna shall be mounted in a location that minimizes to the greatest practical degree its visibility from neighboring property and from adjacent public space, or that is appropriately screened by landscaping or other techniques so as to soften or minimize the visibility of the antenna.*

Visibility of the tower is minimized as a result of the generous setbacks, landscaping and existing vegetation on the Subject Property. The muted gray painting of the tower helps the tower blend with the skyline.

3. *Each part of the ground-mounted commercial broadcast antenna, including support system and guy wires, shall be removed a minimum of ten feet (10 ft.) from each lot line or a distance of at least one-sixth of the mounted height of the antenna, whichever is greater.*

The tower is self-supporting and does not have guy wires. The tower measures four hundred and forty-three feet (443 ft.) in height, which yields a minimum required setback of approximately seventy-four feet (74 ft.) from the lot line. The tower is at least one hundred twenty feet (120') from the nearest property line, and thus exceeds the required setback.

4. *The proposed height of the tower shall not exceed that which is reasonably necessary to render satisfactory service to all parts of its service area.*

The height and continued use of the 1955 tower is critically needed for the Applicant to render important service to all parts of its service area. The tower is used by several providers of news programs throughout the area, the nation, and

the world. The space on the tower is occupied by antennae that are critical to the operation of TV stations. Moreover, there are currently antennae on the towers used by the federal government, the D.C. police, emergency response personnel, and the Fairfax police. Interruption of service would adversely affect these tower tenants and the Applicant. Finally, technology is changing rapidly and additional antenna space is likely to be required in communication operations. The Applicant needs the flexibility to adapt to such unanticipated changes and to provide antenna space for other companies and agencies to do the same in order to better serve the community.

5. *No transmission equipment shall be located in a Residence District, unless location in the district is necessary to render satisfactory and reasonably economical transmission.*

As the Applicant will establish through its Statement of the Applicant, as well as at the public hearing, the continued use of the broadcast tower is necessary for technically satisfactory and economic transmission and is critically need by the Applicant for operation and economic viability.

6. *If review by the Historic Preservation Review Board or Commission of Fine Arts is required, concept review and approval shall occur before review by the Board of Zoning Adjustment.*

This review is not required. Therefore, this condition is inapplicable.

7. *No height of an antenna tower in excess of that permitted by the Act to Regulate that Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.))), shall be permitted, unless the height is approved by the Mayor.*

The height of the tower was previously approved by the District.

8. *Before taking final action on an application for use as an antenna tower, the Board shall submit the application to the D.C. Office of Planning for review and report.*

The Applicant will meet with the Office of Planning to discuss this application. The Office of Planning is required to submit a report on the application a minimum of seven days before the public hearing on the application.

9. *The Applicant shall have the burden of demonstrating the need for the proposed height, and that full compliance with the matter-of-right standards would be unduly restrictive, prohibitively costly, or unreasonable.*

Matter of right standards would permit only one ground mounted antenna not to exceed a height of 12 feet at its highest point (See Sections 201.2 – 201.5 of the Zoning Regulations). As discussed above, the Applicant will establish that the height and continued use of the towers is critically needed for the Applicant to render important service to all parts of its service area, and that the Applicant meets each element for special exception approval. Moreover, the Board's issuance of its order permitting the continued use of the towers indicates that compliance with the matter of right standard would be unduly restrictive and unreasonable.

B. Compliance with 11 DCMR § 3104.1

The Applicant will establish through its Statement of the Applicant, as well as at the public hearing, that continuation of the 1955 antenna tower is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The broadcast facility and tower have been operating at the Subject Property since 1955 and have been subject to periodic special exception review since that time. The tower has been compatible with the surrounding neighborhood and has not adversely affected the use of neighboring properties.

The 1955 tower has a minimal impact on the neighborhood from a visual standpoint. First, the tower is setback from the lot lines in excess of the Zoning Regulations, and is setback a distance of approximately 600 feet from Nebraska Avenue and approximately 200 feet from the Glover-Archbold Park. The Applicant is granting the National Park Service a scenic easement that will run with that land to ensure the broadcast facility is not extended toward the park. Second, the height of the tower is much less than that permitted under the Board's previous master plan approval. Third, the tower is painted a muted gray, which helps to minimize its visibility. The National Park Service has approved this color. Finally, in addition to the large setback from residential areas, views of the tower are further reduced since the Subject Property has been extensively landscaped and there is significant vegetation on the Subject Property.

Continuation of the 1955 tower will not result in increased density or traffic. The continued use of the tower will not result in an increase in office space, number of employees, vehicular or pedestrian traffic, interference with existing radio frequencies, or the establishment of other commercial uses on the Subject Property.