

WBUP(TV), CHANNEL 10
ISHPEMING, MICHIGAN
FACILITY ID NO. 59281
MINOR AMENDMENT TO
FILE NO. BMPCDT-20130802ABN

REQUEST FOR WAIVER OF THE TELEVISION FILING FREEZE

Lake Superior Community Broadcasting Corp. (“LSCBC”), the licensee of WBUP(TV), channel 10, Ishpeming, Michigan (“WBUP”), hereby requests a waiver of the filing freeze announced on April 5, 2013, in connection with the instant minor amendment to WBUP’s above-captioned construction permit application.¹ For the reasons set forth below, Lake Superior submits that a grant of this waiver request will serve the public interest by bringing first over-the-air ABC and CW network programming to thousands of people in this small television market, and expanding the reach of the local television service provided by WBUP, including local news and potentially life-saving weather information, to a significant number of people in the underserved Upper Peninsula of Michigan. Additionally, because WBUP is a VHF station, and the proposed change is a small one with minimal preclusive impact on the use of this channel in other areas of the United States when compared to the existing construction permit already granted to the station,² a waiver of the filing freeze in this case will not frustrate the objectives of the Commission’s planned incentive auction of UHF television spectrum.

Under normal circumstances, the facilities proposed in the instant application would be subject to routine processing, apart from any necessary Canadian coordination. However, because the facilities proposed herein would increase WBUP’s noise-limited contour beyond those authorized in its current license³ and construction permit,⁴ the current filing freeze is implicated.⁵

The *Freeze Notice* specifically contemplates that waivers of the filing freeze may be necessary. For example, the *Freeze Notice* states that the Media Bureau will contemplate, “on a case-by-case basis, requests for waiver of the [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.”⁶

¹ *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, Public Notice, DA 13-618 (rel. Apr. 5, 2013) (“*Freeze Notice*”).

² File No. BMPCDT-20091015AAS.

³ File No. BLCDDT-20090623AAK (granted Aug. 23, 2011).

⁴ File No. BMPCDT-20091015AAS. The current construction permit has been tolled until July 21, 2014. See letter dated September 30, 2013 from Barbara A. Kreisman, Chief, Video Division, Media Bureau to David A. O’Connor, Counsel for Lake Superior.

⁵ *Freeze Notice* at 2.

⁶ *Id.*

LSCBC submits that such extraordinary circumstances are present here, and that the proposed modification is in the public interest. As an initial matter, WBUP operates on a VHF channel (channel 10). The rationale for imposing the freeze was to “avoid frustrating the central goal of ‘repurpos[ing] the maximum amount of *UHF* spectrum for flexible licensed and unlicensed use’”⁷ Because the proposed modification would only affect VHF spectrum holders, and because the Spectrum Act prohibits the Commission from forcing television broadcasters to relocate to VHF spectrum,⁸ a waiver in this instance would not frustrate the Commission’s efforts to move forward with an incentive auction of broadcast UHF spectrum.

Moreover, as demonstrated in the attached engineering statement, the additional coverage area that would result from the proposed modification is primarily in the direction of Lake Superior and Canada, and therefore its preclusive effects on the use of this channel in other parts of the United States for stations displaced by the incentive auction repacking are minimal.⁹ Relatedly, WBUP is located in an extremely remote area,¹⁰ far from most other television operations, which also significantly decreases any potential impact on the incentive auction or other stations.

A waiver of the freeze in this instance is also necessary in order to improve quality service to the public. As discussed in the attached engineering statement, the WBUP licensed Appendix B facilities serve only 84,000 persons. This limited service is due in part to the fact that LSCBC does not own the tower where its current antenna is located, and the tower owner has made clear that it would not permit WBUP to locate its antenna any higher on the tower.¹¹ Indeed, this limitation is what precipitated LSCBC’s decision in 2009 to build its own tower so that improved and increased service to Upper Peninsula viewers would be possible.

LSCBC was caught by surprise when the FCC instituted the freeze on minor change applications by television stations. It had been through a long process clearing its new transmitter site, constructing a road to the site and bringing electricity to it, and blasting solid rock in order to install the tower footings and support. Near the end of last year, as these pre-factory efforts were nearing an end, LSCBC began to review its antenna choice.

⁷ *Id.* at 1-2 (emphasis added).

⁸ Middle Class Tax Relief and Job Creation Act of 2012, Pub. Law. No. 112-96, § 6403(b)(3). Although some television broadcasters may voluntarily elect to relocate to VHF spectrum in exchange for a share in reverse auction revenues, the number of such licensees that will ultimately do so, if any, is unknown at this time, and therefore it would be speculative to assume that VHF spectrum, particularly in sparsely populated areas of the country such as the Upper Peninsula of Michigan, needs to be preserved for auction participants. In any event, as shown below, the proposed change in this instance has no preclusive effects.

⁹ See Engineering Statement, at 8-9 & Exhibit E-10.

¹⁰ Although the Upper Peninsula of Michigan represents 29% of the land area of Michigan, only 3% of Michigan residents live in the Upper Peninsula. See Engineering Statement, at 3.

¹¹ Because of WBUP’s low height on the tower, the station frequently gets complaints about signal pixelation and reception problems even from the 84,000 viewers it is predicted to serve. A signal from the top of a tower, in contrast, would be far more robust and reliable, and would avoid these reception issues.

The antenna proposed for use in its existing construction permit was significantly directionalized. At the time of the filing of the construction permit application in October 2009, the digital transition had just occurred, and the station's current antenna was deemed inadequate for long-term digital use. So the antenna proposed in the application was suggested.¹²

Since that time, and with several years of digital operations experience, LSCBC, on the advice of engineering consultants, concluded that its current antenna was in fact capable of potentially robust digital operations, and that the signal from this antenna atop the new tower would be superior to that which would be achieved with the antenna authorized in the construction permit, and at a far lower cost. The new antenna would cost almost \$100,000, about 20% of the station's revenues from last year, for coverage predicted to be significantly inferior to that which would be achieved from simply moving the existing licensed antenna to the top of the new tower.

But, as LSCBC was preparing to move forward with an application to switch out the antennas through a routine filing, the Commission imposed the freeze. The only way that the existing licensed antenna could be used at the new site, without violating the freeze, would be by mounting it at a very low elevation on the new tower, and at a significantly reduced maximum effective radiated power – technical parameters that would cut the service area of the station in half, rather than increasing it.¹³ Obviously, that would defeat the whole purpose of constructing the new tower (and the half-million dollar expenditure that has entailed – see Exhibit 1).

To avoid this unacceptable loss of service to nearly half its viewers, LSCBC is filing this minor amendment and waiver request in order to permit WBUP to locate the antenna at the top of the new tower, at a center of radiation of 179 meters AGL. Operations from the top of the tower would provide service to 109,506 persons, more than twice the freeze-limited facilities, and more than 4,200 people than would be reached with the facilities authorized in the current construction permit.¹⁴ To put that figure in perspective, given the small market in which this television station operates, that increased service represents 22.8% of the total market population. That percentage of a coverage increase would be like adding 4,754,478 more persons to a station serving the New York market.

Critically, among the newly served population would be 10,699 persons predicted to receive over-the-air ABC network service from broadcast television for the very first time. As a local ABC affiliate dedicated to local news coverage (with CW programming on its .2 channel), WBUP provides potentially life-saving news and weather information through its significant level of local news programming.¹⁵ Providing a first broadcast television network service to these 10,699 individuals is strongly in the public interest and justifies a waiver of the filing freeze. More than 3,200 people would be potentially receiving their first over-the-air CW

¹² File No. BMPCDT-20130802ABN.

¹³ Because of the restrictions imposed by the filing freeze, WBUP's operations at the newly constructed tower site would, absent a waiver, be severely limited, with the antenna positioned at only 61.2 meters above ground level ("AGL"), and with a predicted service area of only serve 47,770 persons. *See* File No. BMPCDT-20130802ABN (as originally proposed on August 2, 2013).

¹⁴ File No. BMPCDT-20091015AAS.

¹⁵ The station broadcasts local news three times a day.

service as well from WBUP's HD-2 signal. Again, while these absolute numbers may not seem high for persons used to dealing with much bigger markets, in this small market, new service will be provided to almost 10% of the population within the station's licensed noise limited contour, and over 13% of the geographic area (obviously, to less densely populated areas where viewers are more likely to rely on over-the-air TV for their information needs).

In sum, because a waiver of the filing freeze in this instance will bring potential first network service with local news to thousands of unserved people, and because such a waiver will not adversely impact the Commission's incentive auction processes or any other television station's operations, the public interest favors the continued processing and grant of this application, as amended. LSCBC respectfully submits that a waiver of the filing freeze is warranted under the unique circumstances described in this request.