

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

The Videohouse, Inc.,
WOSC-CD, Pittsburgh, PA
Facility ID No. 66636
Channel 26
BLDTL-20130327AEC

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GN Docket No. 12-268
DA 15-679

ACCEPTED/FILED

JUL -9 2015

To: The Secretary
Attn: Barbara A. Kreisman,
Chief, Video Division, Media Bureau

Federal Communications Commission
Office of the Secretary

PETITION FOR ELIGIBLE ENTITY STATUS

Pursuant to the Media Bureau's Public Notice, DA 15-679 (rel. June 9, 2015), The Videohouse, Inc. ("Videohouse"), licensee of Digital Class A Station WOSC-CD, Channel 26, Pittsburgh, Pennsylvania (Facility ID No. 66636) ("WOSC" or the "Station"), respectfully requests that the Commission designate WOSC eligible for protection in the repacking process and for relinquishment in the reverse auction (*i.e.*, an "eligible facility"). Videohouse believes the Station is eligible for discretionary protection consistent with the Report and Order, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, 29 FCC Rcd 6567 (2014).

WOSC is a Class A eligible station that applied for and received Class A status after February 22, 2012. We are aware that the Commission believes there are possibly 100 out-of-core Class A eligible stations that still had not filed for Class A status as of May 29, 2015. See Second Order on Reconsideration, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 (rel. June 19, 2015), at ¶ 51 n.177

(the "Reconsideration Order"). WOSC is not one of these stations and does not support service protection or auction participation for stations that fall into that category. Meanwhile, the FCC has mandated that May 29, 2015 is the cutoff date for all stations to have their Class A and full power stations built in order to be eligible for protection and auction participation. WOSC satisfied this deadline and should be treated similarly to other eligible stations -- indeed, WOSC built its in-core digital facilities and filed for its Class A status over two and a half years ago. In fact, we will demonstrate that from the year 2000, Videohouse did everything in its power to build our station and file an accurate, truthful and timely application for a Class A license -- despite multiple hurdles and uniquely difficult circumstances beyond its control.

The Reconsideration Order denied WOSC's Petition for Reconsideration. However, the findings in the Reconsideration Order are inaccurate in several critical respects as it relates to WOSC.

First, the Reconsideration Order says that "petitioners [including Videohouse] did not certify continuing compliance with Class A requirements in an application filed with the Commission until after the enactment of the Spectrum Act, and they had no justification for not seeking discretionary protection in response to the Incentive Auction NPRM." Reconsideration Order at ¶ 62.

This is simply not true with respect to WOSC. The Station has continually certified its compliance with Class A requirements. Starting with the certification for the 2nd quarter of 2000 WOSC continually filed, on a quarterly basis, its certification of compliance with Class A requirements. WOSC placed certifications of its continuing compliance with the Class A requirements in the station's local Public Inspection File, where they were (and are) available for inspection by the public and the FCC. The Commission prevented the filing of these

certifications in its online Public Inspection File system by limiting access to that system to stations that had already been granted Class A status. So it was impossible for WOSC to file its Class A certifications online until the certification for the first quarter of 2014 -- at which time we uploaded retroactively all of the Station's certifications dating back to 2000.

Second, WOSC is and has been compliant with children's programming requirements since they became effective. WOSC diligently and regularly devotes many staff hours per week to ensure that all children's programming is airing properly and in compliance with the children's programming requirements. In fact, WOSC has a dedicated server to air children's programming to insure that all programs make the air and are compliant. WOSC's children's programming reports (beginning Q1 2006) are maintained in the FCC's online Public Inspection File and in the Station's local Public Inspection File.

Third, the Reconsideration Order states that "petitioners did not attempt to demonstrate in response to the Incentive Auction NPRM why they should be afforded discretionary protection. Rather, on reconsideration, petitioners for the first time attempt to explain why they also should be extended discretionary protection. They have not shown, however, why they were unable to raise these facts and arguments before adoption of the Incentive Auction R&O." Reconsideration Order at ¶ 59.

Once again, this statement is not true with respect to WOSC. In my capacity as the owner of Videohouse, the licensee of WOSC, and an investor in 11 other stations -- and as one of the founders of the Class A service -- I advised the Commission that "it would be unfair to Class A Television Licensees to use February 22, 2012 as the date for determining which spectrum usage rights an eligible Class A licensee will be bidding to relinquish in the reverse spectrum auction. In our own experience, we have built a substantial portion of our digital

stations since February 22, 2012.” *See* Reply Comments of Bruno Goodworth Network in GN Docket No. 12-268 (March 11, 2013).

At the request of the Media Bureau, I personally facilitated their outreach to other Class A licensees to support and participate in the Incentive Auction. Thus, on Monday April 8, 2013, I advised representatives of the Media Bureau and the Incentive Auction Task Force (“IATF”) at an NAB forum that “there were approximately 304 out-of-core Class A Qualified Television stations that originally filed for eligibility for Class A and were accepted. Most of them have just found or are finding a digital channel in the core spectrum. This is because full power stations had both digital and analog channels were crowding the spectrum to the point that these Class A qualified stations could not find a home in the core until now when the full powers relinquished their analog channels. These stations are in the process of building their facilities and should be accorded all rights to participate in the auction and be protected in the repack. Some have multiple construction and engineering problems like my station WOSC in Pittsburgh that did not finish building until after February 22, 2012.”

So it is clear that Videohouse publically and repeatedly asserted that WOSC was subject to discretionary protection. I also consistently took the position before both the Media Bureau and the IATF that using February 22, 2012 as the eligibility cutoff date was not appropriate or acceptable for Class A eligible stations. *See* Reply of Bruno Goodworth Network, Inc. in GN Docket No. 12-268 (Nov. 24, 2014).

As described above, WOSC had a clear history of compliance with Class A requirements and of trying to convert to Class A status -- but it encountered unforeseeable obstacles that prevented it from filing before February 22, 2012. Specifically, WOSC operated on Channel 61 analog. From the years 2000 to 2009 Videohouse could not find a new home for

WOSC in the in-core spectrum of channels 2-51 because it operated in a highly congested market and therefore needed to wait until the digital transition was over and then apply for an in-core channel that was to be given up by a full power analog station in the area.

Preliminarily we identified channel 26 as a potential candidate for an acceptable in-core channel. WQEX (owned by WQED Multimedia, Inc.) operated on analog channel 16 and digital channel 26 and transmitted from the same tower as WOSC. Its sister station WQED, meanwhile, operated on analog channel 13 and digital channel 38. The tower is a "candelabra" with two "candles." One of the "candles" housed WQED's channel 13 antenna; the other housed WQEX's channel 16 and 26 and WQED's channel 38 on one antenna. This was an elaborate combining system and it worked well for them.

WOSC analog was located at 330 feet on the WQED tower. WOSC's antenna was a dual antenna system array that housed many Class A and LPTV stations in the area.

Early in 2009 WQED announced that it would use channel 13 for WQED's permanent digital facilities and channel 38 for WQEX's permanent digital facilities. This meant that there would be two free channels on the combined antenna. Once we received this information we asked WQED to let us use the freed up channels in their transmission plant for our stations. We decided that WOSC could use Channel 26.

In early March 2009 we began talking to WQED about the possibility of using channel 26 and its transmission plant. As part of these discussions we asked WQED to give us an interference waiver so that we could apply for a construction permit and build out the Station simultaneously with the transition of WQEX to digital-only operations. Thereafter, and as described in more detail below, in March 2009 WOSC applied for, and in September 2009 was granted, a construction permit for in-core digital channel 26.

However, we did not believe in good faith that we could file for Class A status on channel 26 until we were certain that channel 26 ultimately would be feasible to use if we did not have access to the existing WQEX tower site. We also were concerned that if for some reason after we filed for Class A status on channel 26, the channel turned out not to be feasible so that our filing had been premature and inaccurate, we would not be permitted to modify our Class A status to specify an alternative channel.

The following timeline summarizes the key milestones in our quest to complete WOSC's transition to an in-core digital channel and perfect our Class A status:

- March 2009: WOSC applies for Channel 26 for its in-core digital facilities.
- June 2009: WQEX relinquishes Channel 26 digital and moves to Channel 38 digital.
- September 2009: WOSC is granted a construction permit to build its in-core facilities on Channel 26.
- November 2009: WOSC begins negotiations with WQED for the use of its transmission equipment for Channel 26.
- December 2009: Negotiations pause for the holidays.
- January 2010: Negotiations resume.
- February 2010: Negotiations appear to stall. (We did not know it at the time but WQEX was in the process of being sold.)
- On or about April 2010: WQED sells the Channel 26 digital transmitter to another entity. WOSC had been hopeful that it would be able to lease this transmitter from WQED for WOSC's digital Channel 26 operations.
- August 2010: WQED abruptly suspends negotiations regarding the use of the WQEX antenna and combining system pending the outcome of "another offer."
- September - October 2010: WQED does not engage with WOSC.
- November 8, 2010: WQED enters into a deal to sell WQEX to ION Media Networks, Inc.
- November 2010 - May 2011: WOSC is told to wait for the outcome of the WQEX sale to see "if" we could use the WQEX antenna and combining system.

- January 2011: Frustrated by WQED's reluctance to conclude the negotiations for the use of their tower and the remaining WQEX equipment, WOSC begins a search for another tower site.
- March 2011: WOSC locates a new site at the full power station WPGH site ("New Site No. 1") and begins negotiations with the tower owner.
- April 2011: WOSC identifies an alternative tower site at the full power station WPCB site ("New Site No. 2") and begins negotiations with the tower owner.
- May 2011: WOSC is informed that plans for it to use WQEX's equipment have been scrapped. The new owners have decided not to share the station's antenna and equipment.
- On or about July 2011: WOSC receives an FCC letter directing it to cease analog operations on December 31, 2011. WOSC continues to operate in analog on channel 61.
- July 2011: An engineering review of New Site No. 2 determines that WOSC's operation from that site would cause adjacent channel 25 interference. As a result plans to use that site are abandoned.
- August 2011: Following a lengthy negotiation, the owner of New Site No. 1 decides it does not want to lease space to other television stations, including WOSC. Negotiations are terminated.
- September 2011: Realizing that use of Channel 26 may not be feasible, WOSC works to identify an alternative digital in-core channel that could operate from New Site No. 2.
- October 2011: WOSC begins plans to shut down its Channel 61 analog facilities per the FCC's directive. Plans call for a complete change in the way the current analog antenna array will work with all the other stations located at 330 feet. The high band antenna will be removed, the combiner on the tower will be removed and existing channels will be combined into the low band antenna through a new combiner.
- November 2011: Equipment for this project is ordered. Delivery is scattered in November and December.
- December 31, 2011: WOSC ceases analog operations.
- January 2012: WOSC removes analog gear in transmitter building and installs digital transmitter and combiner.
- February 2012: It is too cold for tower climbers to remove the high band antenna. However, because WOSC needs to get back on the air it begins testing digital transmission through its existing antenna array.

- February 22, 2012: Ironically, on this date the WOSC antenna fails and appears to have burnt out. The tower can't be climbed because of weather conditions and there is nothing that can be done from the ground.
- April 2012: Tower climbers finally remove the high band antenna at 330 feet and direct connect the low band antenna. WOSC begins to test its digital facilities.
- May 2012: WOSC's digital signal is not steady and causes massive reflected power. The Station's transmitter intermittently shuts down automatically.
- June 2012: Tower climbers determine that the connector to the antenna is defective and replace it. The system seems to be working but within two days reflective power returns and shuts down the system. (We learn after many months that humidity and water caused these problems.)
- July 2012: On a beautiful sunny dry day, tower climbers sweep the system and can't find any problems. System tests over two weeks produce intermittent errors and automatic shutdowns. The problem could be water-related but the system does not react every time it rains. Engineers are puzzled.
- August 2012: Testing continues and it is determined that the jumper cable from the main line to the new antenna connector is defective. It is replaced, but intermittent problems persist. The decision is made to completely tear down the antenna system and start from scratch.
- September 2012: As a last ditch solution, a matching tuner is installed at the antenna and WOSC is able to test and hold a seemingly steady signal at a reduced power level. Engineers think the antenna is rated for low band channels 28 through 36 and therefore sending channel 26 into it may be the problem.
- October 2012: New antenna ordered.
- December 2012: New antenna delivered and WOSC files for STA to operate at reduced power.
- January 2013: New antenna installed. Signal is beautiful and steady.
- January 2013: WOSC returns to full power operation and files FCC form 302-CA for permanent Class A digital operations on Channel 26.

Thus, as should be clear from this chronology, WOSC worked diligently and in good faith to activate its permanent in-core digital facilities. But it was prevented by circumstances beyond its control -- circumstances that continued from March 2009 until January 2013 -- from filing Form 302-CA prior to February 22, 2012. We were clearly trying to find

another channel or tower to operate on so that we could do the right thing, which we believed to be to build our in-core digital facilities and file for Class A status.

It is also important to note that I was responsible for building and licensing five other Class A eligible stations in this region at the same time that I was working to complete construction of WOSC. Those stations were authorized in advance of February 22, 2012 because the build outs went smoothly and we didn't encounter the obstacles that faced WOSC.

The bottom line is that I did everything in my power, diligently and tirelessly, to build WOSC in a timely fashion. I have spent well over one hundred thousand dollars and too many man hours to count to build the station and comply with the rules and regulations that were on the books on February 22, 2012 and the rules and regulations that I have to follow today. The Pittsburgh area remains spectrum-constrained today, and I am concerned that, absent protection in the repacking process, WOSC will be compelled to cease operations and go out of business. This would result in the loss of our huge investment of economic and human resources in the Station, and would disserve the public interest in diversity and competition.

Accordingly, for all the reasons stated herein, pursuant to the Commission's discretionary authority, WOSC should be designated an eligible facility subject to protection in the repacking process and for relinquishment in the reverse auction.

Respectfully Submitted,

THE VIDEOHOUSE, INC.

By: 

Ronald J. Bruno, President

July 9, 2015