

CONFIDENTIAL – NOT FOR PUBLIC INSPECTION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re:)
)
LocusPoint WDVb Licensee, LLC and)
LocusPoint WLPD Licensee, LLC)
)
Request for Service Rule Waiver under)
Section 6403(b)(4)(B) of the Middle Class Tax)
Relief and Job Creation Act of 2012 and)
Section 73.3700(f) of the Commission’s Rules)

**AMENDED AND RESTATED
REQUEST FOR WAIVER OF SERVICE RULES**

LocusPoint WDVb Licensee, LLC (licensee of WDVb-CD, Edison, NJ), and LocusPoint WLPD Licensee, LLC (licensee of WLPD-CD, Plano, IL) (collectively, “LocusPoint”), hereby respectfully request a waiver of certain broadcast service rules pursuant to section 6403(b)(4)(B) of the Middle Class Tax Relief and Job Creation Act of 2012 (the “Spectrum Act”) and section 73.3700(f) of the rules of the Federal Communications Commission (“Commission” or “FCC”), which allow for “flexible use of the spectrum assigned to the licensee to provide services other than broadcast television services.”¹ As shown below, grant of the requested waiver will serve the public interest and thus meets the standard the Commission set for waivers of this kind.²

I. INTRODUCTION

The broadcast television industry stands on the cusp of a new and exciting chapter. The post-Incentive Auction repacking process is underway, and new technologies like the ATSC 3.0 standard are opening up additional ways for broadcasters to serve the public. This is occurring at

¹ LocusPoint is asking the Commission to keep confidential certain portions of this request, and has filed a confidentiality request along with a redacted version of this amended and restated waiver request through the required LMS interface.

² LocusPoint also asks that, to the extent necessary, the Commission waive the provision of Section 37.3700(f) that allows the filing of service rule waive requests “during a “30-day window commencing upon the date that the Channel Reassignment Public Notice is released.” LocusPoint’s original request was filed on May 15, 2017 – i.e., within this 30-day window. Since that time, and after discussions with FCC staff, LocusPoint has refined its approach regarding the flexible use to which it intends to put its assigned spectrum. This Amended and Restated Request for Waiver of Service Rules presents a more focused proposal for flexible use that features existing technologies and established interference management techniques. Waiver of the filing deadline (to the extent necessary) and Commission consideration of this amended request will serve the public interest, thereby meeting the Commission’s waiver standard.

CONFIDENTIAL – NOT FOR PUBLIC INSPECTION

the same time as the public increasingly is expanding the ways in which it consumes video program content. As Chairman Pai noted in his remarks at the National Association of Broadcasters Show earlier this year, “[t]he last thing broadcasting ... needs is outdated regulations standing in its way.”³ In the context of the Next Gen TV standard, he set a clear course for the Commission: “[T]he FCC should promote innovation in the broadcasting business” and “not stand in the way of progress.”⁴ In Section 6403(b)(4)(B) of the Spectrum Act, Congress provided a mechanism through which the Commission can help make good on this promise. The service rule waiver requested herein by LocusPoint – which would enable it to offer additional capacity for unlicensed wireless devices – carries with it the promise of enhancing the efficiency of spectrum use in the UHF television band and providing public interest benefits to consumers and the American economy in general.

In its April 13, 2017 *Incentive Auction Closing and Channel Reassignment Public Notice*, the Commission assigned each of WDVb-CD and WLPD-CD (together, the “LocusPoint Stations”) a new channel to which it must transition in the post-Incentive Auction UHF television band.⁵ Each of the LocusPoint Stations is party to a channel sharing agreement (“CSA”), established prior to the pre-auction application deadline, in which will serve as a “sharer” station to a sharee station that has agreed to relinquish spectrum in Auction 1001. Each of these CSAs includes provisions pursuant to which each LocusPoint Station and its sharee station partner will share financial responsibility for costs incurred as a result of the FCC’s post-auction repacking.

The Spectrum Act affords TV licensees that are entitled to reimbursement of relocation expenses the opportunity to choose to forego that reimbursement and instead obtain a waiver of broadcast television service rules. LocusPoint seeks a waiver to use its post-auction channel in New York City and Chicago (each a “Shared Station”), along with its channel sharing partner, to [REDACTED] in two of the most densely congested local markets in the country.

The waiver requested below will not only reduce the amount required to be paid from the TV Broadcaster Relocation Fund to reimburse the relocation expenses of repacked TV stations, it also will serve the public interest by expanding the amount of broadcast spectrum that can be put to use for [REDACTED]. The non-broadcast services contemplated for provision over the Shared Stations are technically feasible and would employ an established mechanism to protect against interference, and each of the Shared Stations will continue to provide at least one broadcast television program stream on its spectrum at no charge

³ Remarks of FCC Chairman Ajit Pai at the National Association of Broadcasters Show, Las Vegas, Nevada (Apr. 25, 2017), available at <https://www.fcc.gov/document/chairman-pai-addresses-national-association-broadcasters>.

⁴ *Id.*

⁵ See Public Notice, *The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, DA 17-314 (rel. Apr. 13, 2017) (“*Closing and Channel Reassignment Public Notice*”), at ¶ 69 and Post-Auction Technical Parameters files (accessible at http://data.fcc.gov/download/incentive-auction/Transition_Files/) at pp. 15, 28.

to the public. This request therefore meets the standards set by the Commission for service rule waivers and should be granted.

II. ELIGIBILITY AND THE APPLICABLE LEGAL STANDARD

The Spectrum Act provision giving TV licensees the opportunity to forego reimbursement of relocation expenses in exchange for a service rule waiver states that such a waiver would “permit the station to make flexible use of the spectrum assigned to the station for its post-auction channel in order to provide services other than broadcast television services.”⁶ The Commission added Section 73.3700(f)(1)(i) to its rules to implement this provision, affording each “broadcast television station licensee described in paragraph (e)(1)(i) of this section” the opportunity to file a service rule waiver request.⁷ Section 73.3700(e)(1)(i) of the rules includes “channel sharer stations that are reassigned to a new channel in the *Channel Reassignment Public Notice*.” Each of the LocusPoint Stations thus qualifies to seek a service rule waiver.

In implementing section 6403(b)(4)(B) of the Spectrum Act, the FCC determined that, in assessing requests for service rule waivers, it should “interpret this provision *broadly* in terms of the kinds of service rules we will consider waiving. This interpretation is supported by the language of section 6403(b)(4)(B), which *does not make reference to any specific service rules eligible for a waiver, instead referencing them generally*.”⁸ The statute requires only that an entity requesting such a waiver protect against interference and provide at least one broadcast TV stream at no charge to the public.⁹

As a general matter, requests like this one must meet FCC’s general “good cause” waiver standard, which affords the Commission discretion to determine whether “the particular facts make strict compliance inconsistent with the public interest.”¹⁰ The Commission has delegated authority to the Media Bureau (“Bureau”) to evaluate and act on service rule waivers like the one at issue here, and has directed the Bureau to “consider the applicant’s agreement to forego relocation costs as one factor weighing in favor of a waiver grant.”¹¹ In making determinations on waiver requests, the Commission may take into account such issues as more effective implementation of overall policy goals.¹²

⁶ 47 U.S.C. § 1452(b)(4)(B); *see also* *Closing and Channel Reassignment Public Notice* at ¶ 92.

⁷ 47 C.F.R. § 73.3700(f)(1)(i).

⁸ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6828 ¶ 639 (2014) (“*IA Report & Order*”) (emphasis added).

⁹ 47 U.S.C. § 1452(b)(4)(B).

¹⁰ *IA Report & Order* at n.1783 (citing 47 C.F.R. § 1.3) *see also* *Northeast Cellular Tel. Co., LP v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹ *IA Report & Order* at ¶ 640 & n. 1783.

¹² *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

III. THE WAIVER REQUESTED AND THE FLEXIBLE USES ENABLED BY IT

A. THE WAIVER REQUESTED

Section 6403(b)(4)(B) of the Spectrum Act provides an opportunity for UHF television broadcasters to provide innovative new non-broadcast services on their spectrum. Subject only to interference protections and the continued free provision of at least one broadcast television program stream to the public, the statute promotes the flexible use of this spectrum. With this request, LocusPoint seeks a permanent waiver of certain broadcast service rules applicable to the Shared Stations.¹³ The requested waiver will enable LocusPoint and its channel sharing partner to jointly to use the Shared Stations' channels for the provision of spectrum capacity that will help meet the demand for wireless data services in two markets where the need for such capacity is most pressing.

Broadcast services provided over the Shared Stations' assigned spectrum will continue to comply with the TV technical rules contained in Subpart E of Part 73 of the Commission's rules. This includes (but is not limited to) Section 73.682, which requires, among other things, the use of the ATSC transmission standards.¹⁴ Furthermore, LocusPoint and its channel sharing partner each will continue to provide at least one broadcast television program stream at no charge to the public, as required for the requested waiver to remain valid under Section 6403(b)(4)(B) of the Spectrum Act. Also, as demonstrated below, LocusPoint will not provide any service pursuant to the requested waiver that would cause interference to any other licensed service.

To achieve the benefits of flexible use, LocusPoint requests that the following rules be waived:

- *The main studio rule, including the staffing requirement (47 C.F.R. § 73.1125).* The Commission has opened a proceeding that could eliminate this regulation for all broadcast stations,¹⁵ expressing the tentative conclusion that "technological innovations have rendered a local studio unnecessary as a means for viewers and listeners to communicate with or access their local stations and to carry out the other traditional functions that a local studio has served."¹⁶ LocusPoint, along with most commenters, agrees with this conclusion, as well as with the Commission's view that maintenance of a local or toll-free telephone number, along with online communication options, for consumers to contact each Station would serve the public interest. LocusPoint would

¹³ Because of the need for LocusPoint and its channel sharing partner to engage in Stat Mux pool balancing and bitrate allocation to manage their shared use of the Shared Stations, LocusPoint requests that the waiver apply to the totality of spectrum shared at each of the Shared Stations. LocusPoint and its partner have agreed to work cooperatively to facilitate the provision of non-broadcast services over the frequencies assigned to the Shared Stations.

¹⁴ See 47 C.F.R. § 73.682(d).

¹⁵ *Elimination of Main Studio Rule*, Public Draft Notice of Proposed Rulemaking, MB Docket No. 17-106 (posted online April 27, 2017 at <https://www.fcc.gov/document/proposed-elimination-main-studio-rule>) ("Public Draft Main Studio NPRM").

¹⁶ *Id.* at Fact Sheet.

CONFIDENTIAL – NOT FOR PUBLIC INSPECTION

provide such means of communication to consumers in the New York and Chicago locales if the requested waiver is granted. LocusPoint thus requests that the Bureau waive the main studio rule.

- *The daily 18-hour broadcast requirement (47 C.F.R. §§ 73.1740(a)(5)) and 73.6001(b)(1)).* LocusPoint anticipates that the wireless services it would offer with a flexible use authorization will be made available during peak demand hours during each day. LocusPoint understands that Class A TV stations are subject to specific operating requirements, but for the contemplated flexible wireless services to be economically viable, LocusPoint requests that the Commission waive – to a limited degree – the requirement that WDVb-CD and WLPD-CD broadcast for a minimum of 18 hours each day. Instead, LocusPoint asks that these stations be subject to a requirement that they conduct broadcast operation for an average of 18 hours per day, measured on a weekly basis. This limited adjustment to the broadcast requirement for the LocusPoint Stations will afford them greater flexibility in addressing wireless demand at times of peak traffic. The FCC’s daily 18-hour requirement is not mandated by statute,¹⁷ and the agency therefore may waive them. The Stations’ broadcast operations will fully comport with the “minimum operating schedule” requirements generally applicable to television stations under 47 C.F.R. § 73.1740. The Bureau therefore should waive the Class A TV service requirements applicable to the LocusPoint Stations to allow its stations to broadcast a weekly average of 18 hours per day rather than a minimum of 18 hours each day.

Like full power TV stations, Class A TV stations were eligible to participate in the Incentive Auction and to be protected in the post-auction repacking, and they are eligible to have their reasonable relocation expenses reimbursed if they have been assigned to new post-auction channels. It therefore seems obvious and fair that the Class A TV operating rules should be among the service rules from which Class A TV stations applying for service rule waivers can seek relief. Rather than seeking a waiver of all of the Class A TV operating rules, LocusPoint is seeking only limited flexibility with respect to the 18-hour per day rule. Grant of this limited waiver will have little or no effect on the broadcast service experience enjoyed by viewers of the LocusPoint Stations.

B. BENEFITS OF THE PROPOSED FLEXIBLE SERVICES AND PROTECTIONS AGAINST INTERFERENCE

LocusPoint intends to devote capital and resources to advance the Commission’s goal of promoting efficient spectrum use by [REDACTED]

[REDACTED]. The FCC is familiar

¹⁷ Under the Community Broadcasters Protection Act of 1999, a low power television station qualified for the new Class A status if, “*during the 90 days preceding [the date of the statute’s enactment],*” it had “broadcast a minimum of 18 hours per day” and had “broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station.” 47 U.S.C. § 336(f)(2)(a)(i)(I) (emphasis added). By its plain language, this provision simply set forth the qualification thresholds for the then-new service. It was the Commission, in its implementing rules, that imposed these requirements as ongoing service rules for Class A licensees.

with this non-broadcast use of broadcast spectrum, [REDACTED]

[REDACTED]¹⁸

[REDACTED]

[REDACTED]

[REDACTED]

¹⁸ Because of the mandated timing associated with the Commission's consideration of this request, it is not possible for all of the details regarding the proposed flexible use to be laid out with certainty in this request. Nevertheless, as shown herein, the non-broadcast use proposed in this request satisfies the Commission's standard for waivers of this kind.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. *The contemplated service is technically feasible and will protect against interference*

The non-broadcast use contemplated in this request is technically feasible and will protect against interference using [REDACTED].

[REDACTED]

If the waiver requested herein is granted, LocusPoint plans to undertake a significant engineering effort to identify appropriate technical parameters, and if the provision of wireless services are determined to be economically and technologically feasible, would monitor the RF environment on an ongoing basis to ensure that both services continue to meet customer requirements.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LocusPoint believes that there may be opportunities to share spectrum in both time and location dimensions as described below. The contemplated engineering study will examine these types of opportunities in order to determine ways to optimize the use of its spectrum.

- *Time sharing.* LocusPoint’s proposed waiver will allow sharing between broadcasting and broadband services, allowing broadband use at peak traffic times, and allowing broadcast services to operate at times when broadband demand is lower.
- *Location sharing.* In addition to sharing on a time-basis, it may also be possible to allow secondary non-broadcast operations in locations where broadcast TV receivers are absent. Locations such as warehouses, factory floors, garages, etc., may be able to use indoor transmitters without causing interference to broadcast TV receivers in nearby locations. Propagation losses through exterior walls would provide some additional protection from interference. Combined with other technical characteristics to control interference, as discussed below, locations may be identified where simultaneous operations can occur without significant interference.

[REDACTED]

IV. THE REQUESTED WAIVER MEETS THE APPLICABLE STANDARD AND SHOULD BE GRANTED

Though the exact extent of the services that might be offered pursuant to the requested waiver are unknowable at this time, use by the Shared Stations of the TVWS database to offer service to unlicensed wireless devices will ensure that any non-broadcast services continue to protect against interference. The requested waiver could

[REDACTED]

[REDACTED]. The instant request therefore will serve the public interest, and it satisfies all of the applicable statutory and regulatory requirements for a waiver of this kind.

V. CONCLUSION

The broadcast television industry stands at an inflection point in its history. With Section 6403(b)(4)(B) of the Spectrum Act, Congress has provided the Commission with a simple mechanism to make possible new non-broadcast uses of broadcast spectrum and unleash a new wave of innovation in the UHF television band that could facilitate more spectrally efficient uses and provide significant benefits to the public. The Commission should seize this opportunity to create a potentially promising path to that result. LocusPoint respectfully requests that the Bureau promptly grant the waiver requested herein.

Respectfully submitted,

LOCUSPOINT NETWORKS, LLC

By: /s/ William D. deKay
William D. deKay, Executive Chairman
Ravi Potharlanka, President and CEO
6200 Stoneridge Mall Road, Suite 300
Pleasanton, CA 94588
(925) 399-6352

Of Counsel:
Bryan N. Tramont
Jonathan V. Cohen
WILKINSON BARKER KNAUER, LLP
1800 M Street, NW, Suite 800N
Washington, D.C. 20036
(202) 783-4141

August 25, 2017