



Federal Communications Commission
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Re: Request for Service Rule Waiver of
LocusPoint WDVb Licensee, WDVb-CD,
Edison, NJ, Facility ID No. 168834, LMS
File No. 0000024538 and LLC and
LocusPoint WSPY Licensee, LLC, WLPD-
CD, Plano, IL, Facility ID No. 189058, LMS
File No. 0000024539

Dear Licensee/Counsel:

The Media Bureau (Bureau) of the Federal Communications Commission (Commission) has before it two requests for waiver (service rule waiver requests) of Sections 73.1125, 73.1740(a)(5), and 73.6001(b)(1) of the Commission's rules¹ (Rules) filed by LocusPoint WDVb Licensee, LLC, and LocusPoint WSPY Licensee, LLC, the licensees of WDVb-CD, Edison, New Jersey, and WLPD-CD, Plano, Illinois (Stations), respectively (collectively LocusPoint or Licensees).² In lieu of reimbursement for its assigned channel changes, LocusPoint is requesting waiver pursuant to Section 6403(b)(4)(B) of the Spectrum Act and Section 1.3 of the Rules in order to make flexible use of its post-auction channels to provide services other than broadcast television services.³ For the reasons stated below, the Bureau denies LocusPoint's service rule waiver requests.

¹ 47 CFR §§ 73.1125, 73.1740(a)(5), and 73.6001(b)(1).

² As instructed, LocusPoint's service rule waiver requests were filed in LMS as Legal STAs. *See Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 885, paras. 82-84 (MB 2017). The service rule waiver request filed with each legal STA is identical. *See* LMS File Nos. 0000024538 and 0000024539, as amended (collectively, Waiver Request). LocusPoint filed a request for confidentiality with each service rule waiver request and included a redacted version of its request with each application. *See Request for Confidential Treatment concerning Request for Waiver of Service Rules*, Letter from William D. deKay to Marlene H. Dortch, Secretary, FCC, (filed Aug 25, 2017). Because LocusPoint has requested confidential treatment of the specific information, certain portions of this decision have been redacted for public inspection. An unredacted version has been sent directly to the Licensee and its counsel.

³ *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(b)(4)(B)(codified at 47 U.S.C. § 1452(b)(4)(B)), 126 Stat. 156 (2012) ("In lieu of reimbursement for relocation costs...a broadcast

Background. Section 6403(b)(4)(B) of the Spectrum Act provides that in lieu of receiving reimbursement for relocation costs, a reassigned station may request a waiver of the Commission’s service rules to allow the station to make flexible use of its reassigned spectrum to provide services other than broadcast television services.⁴ In the *Incentive Auction R&O*, the Commission delegated authority to the Bureau to act on service rule waiver requests on a case-by-case basis.⁵ The Commission instructed that service rule waivers be evaluated in accordance with Section 1.3 of the Rules, the Commission’s general waiver standard.⁶ Under Section 1.3 of the Rules, a waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁷ When an applicant seeks such a waiver, it must plead with particularity the facts and circumstances which warrant such action.⁸

The Commission instructed the Bureau to “consider the applicant’s agreement to forego relocation costs as one factor weighing in favor of a waiver grant.”⁹ Furthermore, the Spectrum Act requires that a service rule waiver, if granted, will be subject to interference protections and will remain in effect only while the licensee provides at least one broadcast television program stream on such spectrum at no charge to the public.¹⁰ Licensees were required to file service rule waiver requests by May 15, 2017,¹¹ and were permitted to request that waivers be granted on either a temporary or a permanent basis.¹²

The Stations were reassigned new channels in the *Closing and Channel Reassignment Public Notice*. WDVB-CD is currently licensed to operate on channel 23 and was reassigned to channel 22. WLPD-CD is currently licensed to operate on channel 35 and was reassigned to channel 32.¹³ In addition

television licensee may accept, and the Commission may grant as it considers appropriate, a waiver of the service rules of the Commission to permit the licensee, subject to interference protections, to make flexible use of the spectrum assigned to the licensee to provide services other than broadcast television services. Such waiver shall only remain in effect while the licensee provides at least 1 broadcast television program stream on such spectrum at no charge to the public.”).

⁴ See 47 U.S.C. § 1452(b)(4)(B); 47 CFR § 73.3700(f); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6827-30, paras. 637-644 (2014), subsequent history omitted (*Incentive Auction R&O*).

⁵ *Incentive Auction R&O*, 29 FCC Rcd at 6828, para. 640. The Commission concluded that delegating discretion to the Bureau to evaluate and act on waiver requests was consistent with the discretion afforded to the Commission under section 6403(b)(4)(B) to grant waivers “as [the Commission] considers appropriate.” *Id.* at 6829, para. 643; 47 U.S.C. § 1452(b)(4)(B).

⁶ *Id.* at 6828, n.1783; 47 CFR § 1.3.

⁷ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown).

⁸ *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968).

⁹ See *Incentive Auction R&O*, 29 FCC Rcd at 6828, n.1783.

¹⁰ 47 U.S.C. § 1452(b)(4)(B).

¹¹ 47 CFR § 73.3700(f)(1)(i); *Incentive Auction R&O*, 29 FCC Rcd at 6829, para. 643 (establishing a 30-day window for filing following release of the *Closing and Reassignment Public Notice*, which was released on April 13, 2017).

¹² 47 CFR § 73.3700(f)(1)(ii); *Incentive Auction R&O*, 29 FCC Rcd at 6829, para. 643.

¹³ See *Incentive Auction Closing and Channel Reassignment Public Notice; Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-*

to being repacked, the Licensees are also each a party to a pre-auction channel sharing agreement. WLPD-CD is licensed to share its channel with WWTO-TV, La Salle, IL, which is licensed to Trinity Christian Center of Santa Ana, Inc., and relinquished its spectrum usage rights for its current channel in the broadcast television incentive auction in order to channel share.¹⁴ WDVB-CD is licensed to share its channel with WTBY-TV, Poughkeepsie, NY, which is licensed to Trinity Broadcasting of New York, Inc., and also relinquished spectrum usage rights on its current channel in the broadcast television incentive auction in order to channel share.¹⁵

LocusPoint's Request. LocusPoint filed its initial service rule waiver request on May 15, 2017. On August 25, 2017, it amended its request to narrow the scope of the initial request and to provide additional technical details. Because LocusPoint would use spectrum dynamically with its channel sharing partner under its channel sharing agreements, LocusPoint requests that the waiver apply to the “totality of the spectrum shared at each of the Shared Stations.”¹⁶ LocusPoint asserts that the goals of its proposal will only be realized if “the requested waivers are made applicable to each licensee sharing the 6 MHz channel....”¹⁷

In order for the Commission consider the content of the amendment, LocusPoint requests waiver of the May 15, 2017, filing deadline, contending that waiver will serve the public interest, convenience and necessity as its request provides “a more focused proposal for flexible use that features existing technologies and established interference management techniques.”¹⁸ LocusPoint also requests waiver of two broadcast requirements. First, LocusPoint requests waiver of Sections 73.1740 and 73.6001(b)(1) of the Rules, which require Class A television stations to broadcast a minimum of 18 hours per day.¹⁹ LocusPoint contends that for the contemplated service to be “economically viable,” these rules must be waived “to a limited degree.”²⁰ Second, it requests waiver of Section 73.1125 of the Rules, which requires full power and Class A television station to maintain a local main studio.²¹ LocusPoint argues that waiver is appropriate because the Commission had proposed to eliminate this rule at the time its waiver request was filed.²² LocusPoint has also agreed, as required by the Spectrum Act, to forgo reimbursement for relocation expenses for its stations if its waiver requests are granted.

According to LocusPoint, its waiver request satisfies all the applicable statutory and regulatory requirements for waiver under Section 6403(b)(4)(B) of the Spectrum Act and Section 1.3 of the Rules. LocusPoint argues that not only will grant of its service rule waiver requests reduce the amount of money required to be paid from the TV Broadcaster Relocation Fund to reimburse the relocation expenses of the

Auction Deadlines Announced, Public Notice, 32 FCC Rcd 2786, 2817-18, paras. 92-93 (2017) (*Closing and Channel Reassignment Public Notice*); see also http://data.fcc.gov/download/incentive-auctions/Transition_Files/ (containing post-auction channel assignments).

¹⁴ See LMS File No. 0000034033 (granted Nov. 7, 2017).

¹⁵ See LMS File No. 000003447 (granted Nov. 7, 2017).

¹⁶ *Waiver Request* at n.13.

¹⁷ *Id.* at 6-7.

¹⁸ See *Waiver Request* at n.2.

¹⁹ 47 CFR §§ 73.1740 and 73.6001(b)(1).

²⁰ *Waiver Request* at 5.

²¹ *Id.* at 4-5.

²² *Id.* (citing *Elimination of Main Studio Rule, Notice of Proposed Rulemaking*, MB Docket No. 17-106, Notice of Proposed Rulemaking, 32 FCC Rcd 4415 (2017)).

two affected stations, but grant will also serve the public interest by expanding the amount of broadcast spectrum that can be put to use to provide wireless data services in New York City and Chicago – two of the largest markets in the country.²³ While LocusPoint admits that the “exact extent of the services that might be offered pursuant to the requested waiver[s] are unknowable at this time,”²⁴ it contends that “[t]he non-broadcast services contemplated for provision over the Shared Stations are technically feasible and would employ an established mechanism to protect against interference.”²⁵ LocusPoint goes on to state that “each of the Shared Stations will continue to provide at least one broadcast television program stream on its spectrum at no charge to the public.”²⁶

LocusPoint states that the non-broadcast services that it contemplates providing would allow [REDACTED] to serve customers in the New York City and Chicago areas.²⁷ For example, LocusPoint envisions working with [REDACTED] to operate on its licensed spectrum. LocusPoint also suggests it could establish [REDACTED] in which [REDACTED] acknowledges that [REDACTED].²⁸ However, LocusPoint [REDACTED]

²⁹

LocusPoint states that if its request is granted, it would “undertake a significant engineering effort to identify appropriate technical parameters, and if its proposed services are determined to be economically and technologically feasible would monitor the RF environment on an ongoing basis.”³⁰ It also believes that there may be opportunities to share spectrum using time sharing and location sharing techniques, which it would examine as part of the engineering efforts it plans to undertake following grant.³¹ LocusPoint commits that the services it offers will conform to the technical limits set forth in the Commission’s [REDACTED], specifically Sections [REDACTED].³²

Discussion. As a preliminary matter, we grant LocusPoint’s requested waiver of the May 15, 2017, filing deadline. Thus, we consider its amended and restated request. Although the Commission does not ordinarily look favorably on requests to waive a filing deadline, we find that considering the substance of LocusPoint’s amended request is in the public interest because the amendment narrowed the scope of the initial request in a manner that permits the Commission to conduct a more focused analysis and will produce a more effective implementation of overall policy. Accordingly, in this case we grant the request for waiver of the filing deadline and consider the substance of the amended request.

²³ *Id.* at 2.

²⁴ *Id.* at 9.

²⁵ *Id.* at 2.

²⁶ *Id.* at 2-3.

²⁷ *Id.* at 7.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 8.

³¹ *Id.* at 9.

³² *Id.* at 8-9.

As instructed by the Commission, we have considered LocusPoint's agreement to forgo reimbursement as a factor weighing in favor of grant of the requested waiver.³³ Nonetheless, we find that LocusPoint's requests fail to satisfy the Commission's general waiver standard and do not provide sufficient information for the Bureau to find that the contemplated non-broadcast services will provide the "interference protections" required by Section 6403(b)(4)(B) of the Spectrum Act. Accordingly, we deny LocusPoint's service rule waiver requests.³⁴

First, we find that LocusPoint has failed to provide sufficient information to justify a waiver of Sections 73.1740(a)(5) and 73.6001(b)(1) (Class A minimum operating requirements),³⁵ which require that Class A television stations transmit a broadcast signal at least 18 hours per day. LocusPoint requests that instead of satisfying the rule's 18-hour daily requirement, it should be permitted to broadcast only an average of 18 hours per day over the course of a week.³⁶ The only argument LocusPoint provides for this request is that without a waiver its contemplated service may not be "economically viable."³⁷ We find that LocusPoint's assertion of economic viability alone does not justify a waiver in this case. Indeed, LocusPoint does not explain how an 18 hour per day operating requirement, measured either on a daily basis as required by the Commission's rules, or averaged over a weekly basis as requested by LocusPoint, impacts the contemplated service's economic viability. We are also unable to deduce such rationale from the request given that, by LocusPoint's own admission, "the exact extent of the services that might be offered pursuant to the requested waiver are unknowable at this time."³⁸

Second, we find that LocusPoint's requests fail to provide sufficient information for the Bureau to conclude that, if granted a service rule waiver, LocusPoint's proposed non-broadcast services will provide sufficient "interference protections" as required by Section 6403(b)(4)(B) of the Spectrum Act.³⁹ As an initial matter, we find that LocusPoint's requests fail to provide any technical evidence demonstrating that the proposed service would protect against interference to other services. Instead, LocusPoint summarily

³³ *Incentive Auction R&O*, 29 FCC Rcd at 6828, n.1783 (emphasis added). *Id.* at 6828-29, para. 641 (declining to grant service rule waivers solely upon request and determining that the Bureau must conduct a case-by-case analysis of each waiver request for compliance with the Spectrum Act and Commission's general waiver standard).

³⁴ We find that LocusPoint's requests for waiver of Section 73.1125 of the Rules, the main studio rule, is moot and dismiss it. Waiver Request at 4-5 (stating that if waiver of the main studio rule were granted, it would agree to maintain a toll free or local telephone number in its community of license). On October 24, 2017, the Commission adopted a Report and Order eliminating the main studio requirement, effective 30 days after publication in the *Federal Register*. Upon the effective date, Section 73.1225 of the Rules will require only that a broadcast station maintain either a local or toll-free telephone number in its community of license. See *Elimination of Main Studio Rule*, MB Docket No. 17-106, Report and Order, FCC 17-137 (rel. Oct. 24, 2017); Federal Communications Commission, *Elimination of Main Studio Rule*, 82 Fed. Reg. 57876 (Dec. 8, 2017) (setting rule effective date of January 8, 2018). As a result, we do not read LocusPoint's waiver request as agreeing to forego reimbursement in return for a waiver of the main studio requirement given that the elimination of this requirement will shortly become effective.

³⁵ 47 CFR §§ 73.1740(a)(5) and 73.6001(b)(1).

³⁶ See *id.*

³⁷ Waiver Request at 5 ("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.").

³⁸ *Id.* at 8.

³⁹ See 47 U.S.C. § 1452(b)(4)(B); 47 CFR § 73.3700(f).

contends that its contemplated service is “technically feasible”⁴⁰ and will “protect against interference using [REDACTED]”⁴¹ LocusPoint concedes that only *after* grant of its service rule waiver request will it undertake engineering efforts 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.”⁴² LocusPoint does not explain how such monitoring would be accomplished or what actions would be taken in the event of interference. The lack of specificity provided by LocusPoint concerning the precise nature and technical parameters of its service render it impossible for the Bureau to determine whether LocusPoint’s contemplated non-broadcast services will protect against interference.⁴³

In addition, LocusPoint’s statement that it will comply with [REDACTED] does not provide sufficient “interference protections” as required by Section 6403(b)(4)(B) of the Spectrum Act. For example, [REDACTED]

[REDACTED]. LocusPoint states that it will work with [REDACTED], but it has not provided any evidence that it has any feasible mechanism or has had discussions with any [REDACTED] concerning the type of enhancements to the [REDACTED] that would be required to implement its proposal. LocusPoint does not address in its waiver request who would be responsible for developing such enhancements or commit to providing the necessary financial support to make such modifications. In addition, the rules require that [REDACTED]

[REDACTED] 45 [REDACTED]

Finally, we find that LocusPoint’s requests fail to seek waiver of all the rules that would likely need to be waived to provide the contemplated service. Based on the limited information provided in its proposal, it appears that LocusPoint’s contemplated service and plans to protect against interference are in conflict with a number of existing [REDACTED] rules and are therefore unworkable within the current language of those rules. For example [REDACTED]

⁴⁰ Waiver Request at 8.

⁴¹ *Id.*

⁴² *Id.*

⁴³ The Bureau’s analysis concerning the Commission’s [REDACTED] was conducted in consultation with the Office of Engineering and Technology.

⁴⁴ [REDACTED]

⁴⁵ [REDACTED]

[REDACTED].⁴⁶ Although LocusPoint states it would comply with the provisions of Section [REDACTED] of the Rules, it could not meet the requirements of the rule given that the contemplated service would be [REDACTED]. LocusPoint also does not provide any information regarding whether its contemplated service would be able to operate based on its proximity to [REDACTED].⁴⁷ In light of these considerations and uncertainties, we are unable to conclude that LocusPoint will be able to protect against interference as required by the Spectrum Act.

Accordingly, for reasons discussed above and pursuant to the authority delegated to the Bureau under Sections 0.61 and 0.283 of the Rules,⁴⁸ the requests for waiver of the May 15, 2017, service rule waiver filing deadline filed by LocusPoint pursuant to Section 1.3 of the Rules,⁴⁹ **ARE GRANTED.**

For the foregoing reasons and pursuant to the authority delegated by the Commission to the Bureau in the *Incentive Auction Report and Order*,⁵⁰ the requests for waiver, LMS File Nos. 0000024538 and 0000024539, filed by LocusPoint pursuant to Section 1.3 of the Rules and Section 6403(b)(4)(B) of the Spectrum Act,⁵¹ **ARE DENIED.**

Sincerely,


Michelle M. Carey
Chief, Media Bureau

⁴⁶ [REDACTED]

⁴⁷ [REDACTED]

⁴⁸ 47 CFR §§ 0.61 and 0.283.

⁴⁹ 47 CFR § 1.3.

⁵⁰ *Incentive Auction R&O*, 29 FCC Rcd at 6828, para. 640. See 47 CFR § 73.7300(f)(1)(i) (requiring service rule waivers be filed with the Chief of the Media Bureau)

⁵¹ 47 CFR § 1.3 and 47 U.S.C. § 1452(b)(4)(B). See 47 CFR § 73.3700(f).