

**REDACTED –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 )

**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.”<sup>1</sup> 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.

**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 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 recent National Association of Broadcasters Show, “[t]he last thing broadcasting . . . needs is outdated regulations standing in its way.”<sup>2</sup> 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.”<sup>3</sup> In Section 6403(b)(4)(B) of the Spectrum Act, Congress provided a mechanism

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<sup>1</sup> 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 waiver request through the required LMS interface.

<sup>2</sup> 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>.

<sup>3</sup> *Id.*

**REDACTED – FOR PUBLIC INSPECTION**

through which the Commission can help make good on this promise. The service rule waiver requested herein by LocusPoint 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.<sup>4</sup> 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. With such a waiver, the Shared Stations may be able to use their post-auction channels to [REDACTED] in two of the most densely congested local markets in the country, New York City and Chicago. LocusPoint wishes to explore these options with its channel sharee partner.

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 be designed 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 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.”<sup>5</sup> 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

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<sup>4</sup> 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/](http://data.fcc.gov/download/incentive-auction/Transition_Files/)) at pp. 15, 28.

<sup>5</sup> 47 U.S.C. § 1452(b)(4)(B); see also *Closing and Channel Reassignment Public Notice* at ¶ 92.

**REDACTED – FOR PUBLIC INSPECTION**

section” the opportunity to file a service rule waiver request.<sup>6</sup> 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.*”<sup>7</sup> 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.<sup>8</sup>

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.”<sup>9</sup> 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.”<sup>10</sup> In making determinations on waiver requests, the Commission may take into account such issues as more effective implementation of overall policy goals.<sup>11</sup>

### **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.<sup>12</sup> The requested waiver will enable LocusPoint and its channel sharing partner

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<sup>6</sup> 47 C.F.R. § 73.3700(f)(1)(i).

<sup>7</sup> *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).

<sup>8</sup> 47 U.S.C. § 1452(b)(4)(B).

<sup>9</sup> *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).

<sup>10</sup> *IA Report & Order* at ¶ 640 & n. 1783.

<sup>11</sup> *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>12</sup> 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.

## REDACTED – FOR PUBLIC INSPECTION

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.

LocusPoint requests that the following service rules applicable to the Shared Stations be waived:

- *The main studio rule, including the staffing requirement (47 C.F.R. § 73.1125).* The Commission is scheduled to open a proceeding that could eliminate this regulation for all broadcast stations,<sup>13</sup> and LocusPoint agrees with the tentative conclusion expressed in the draft notice of proposed rulemaking 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.”<sup>14</sup> We also agree with the Public Draft Main Studio NPRM that maintenance of a local or toll-free telephone, along with online communication options, for consumers to contact each Station would serve the public interest and so LocusPoint would provide such means of communication to consumers in the New York and Chicago locales. LocusPoint thus requests that the Bureau waive the main studio rule.
- *The Class A TV service rules (47 C.F.R. §§ 73.1740(a)(5) and 73.6001(b)).* LocusPoint anticipates that the wireless services it would offer with a flexible use authorization will be made available during peak demand hours during the day. Provision of these services may be economically infeasible – and would serve little or no public interest purpose – if Commission rules requiring Class A stations to broadcast a minimum of 18 hours per day and to provide an average of at least three hours of locally produced programming per week continued to apply to the LocusPoint Stations. These requirements are not mandated by statute,<sup>15</sup> 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.
- *TV technical rules (47 C.F.R. Part 73, Subpart E).* Non-broadcast services provided over the Shared Stations' assigned spectrum must be free of the restrictions imposed by the TV technical rules contained in Subpart E of Part 73 of the Commission's rules. This

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<sup>13</sup> *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”).

<sup>14</sup> *Id.* at Fact Sheet.

<sup>15</sup> 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.

## REDACTED – FOR PUBLIC INSPECTION

includes (but is not limited to) Section 73.682, which requires, among other things, the use of the ATSC transmission standards.<sup>16</sup>

LocusPoint's channel sharing partner 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, LocusPoint will not provide any service pursuant to the requested waiver that would cause interference to any other licensed service.

### ***B. BENEFITS OF FLEXIBLE USE AND SERVICES MADE POSSIBLE BY THE REQUESTED WAIVER***

Given the newness of the service rule waiver opportunity and the compressed timeframe within which the instant request is required to be filed, LocusPoint cannot say with specificity how it will engineer the services to be provided using the flexible use authorizations granted by the requested waiver, although the proposals addressed below build upon known uses of the broadcast band for non-broadcast services. It is certain, however, that public interest benefits will result from the implementation of wireless services pursuant to the requested waiver because these services will help to meet the demand for licensed and unlicensed wireless data services.<sup>17</sup> This ever-exploding demand can be satisfied only if additional spectrum (in a variety of frequency ranges, including low-band) is made available to carry this data traffic. Through the service rule waiver, the Spectrum Act gave the Commission another tool to meet that challenge.

Described below are two potential non-broadcast services in which LocusPoint would consider investing capital and resources if authorizations for flexible use of the Shared Stations are granted through the requested waiver. Allowing LocusPoint to explore these options will advance the Commission's goal of promoting efficient spectrum use and will otherwise serve the public interest. These benefits, however, are achievable only if the requested waivers are made applicable to each licensee sharing the 6 MHz channel occupied by each of the Shared Stations because of the dynamic sharing made possible by the Commission's channel sharing rules.

The preliminary nature of the proposed non-broadcast uses is no reason to deny the requested waiver. To the contrary, the flexibility that a service rule waiver will afford is in and of itself a public interest benefit, in that it will enable LocusPoint to explore various alternative (and perhaps even multiple) technologies and engineering designs. By granting the Shared Stations greater freedom to explore the provision of these services, the Commission will create a necessary condition in which industry knowledge can be advanced regarding how broadcast

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<sup>16</sup> See 47 C.F.R. § 73.682(d).

<sup>17</sup> In its most recent mobile data traffic study, Cisco reported that the total amount of mobile data traffic has grown 18-fold over the past five years, increasing by more than 63 percent in 2016, and forecast that it will increase sevenfold between 2016 and 2021. See *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2016–2021 White Paper*, available at <http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/mobile-white-paper-c11-520862.html>.

**REDACTED – FOR PUBLIC INSPECTION**

spectrum can be put to more innovative use. This will yield benefits for consumers, other broadcasters, and the American economy in general.<sup>18</sup>

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>18</sup> If wireless services can be successfully provided, this waiver could pave the way for similar flexibility to be granted to other licensees in the future.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**C. THE CONTEMPLATED SERVICES ARE TECHNICALLY FEASIBLE**

It should be possible to feasibly design the non-broadcast uses contemplated in this request to protect against interference, and doing so would help the Commission address a

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[REDACTED]

[REDACTED]

[REDACTED]

## REDACTED – FOR PUBLIC INSPECTION

problem it has long recognized: the underutilization of spectrum. As the Commission's Spectrum Policy Task Force noted 15 years ago, spectrum often is not being fully utilized and more efficient spectrum use can be created by permitting shared access to the spectrum by other users.<sup>24</sup> The options LocusPoint would like to explore are discussed below.

- *Frequency sharing.* In the UHF television band, requiring TV licensees to provide a television broadcast program stream in the same spectrum in which wireless services are contemplated will preclude certain high-power wireless services.<sup>25</sup> It may be possible, however, for low-power wireless services to coexist in the same spectrum with digital broadcasting services if the operating parameters of the wireless system are carefully controlled. In keeping with long-understood principles of spectrum efficiency, this approach would allow for [REDACTED].
- *Time sharing.* Recent technological developments allow for the increased use of broadcast spectrum for non-broadcast uses during peak demand times. Feasible approaches demonstrated in other spectrum bands include: (1) Dynamic Frequency Selection (DFS) used in the 5 GHz band, which requires devices to monitor channels for primary radar systems, and only allows operation on a channel at times and locations that radars are not present;<sup>26</sup> and (2) Spectrum Access System (SAS) used in the 3.5 GHz band, under which a near-real-time spectrum sensing capability will allow Citizens Broadband Service Devices (CBSDs) to operate at times and locations where radar systems are not present.<sup>27</sup> Similar approaches may 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.* 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.

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<sup>24</sup> FCC Spectrum Policy Task Force, *Report of the Spectrum Efficiency Working Group* (November 15, 2002) at p. 17, available at [https://www.fcc.gov/sptf/files/SEWGFfinalReport\\_1.pdf](https://www.fcc.gov/sptf/files/SEWGFfinalReport_1.pdf).

<sup>25</sup> If the Commission would permit a waiver grantee's broadcast television programming to be provided to the public through other spectrum (for example, through a subchannel of another television station in its market), more of its licensed spectrum would be usable for higher-valued wireless uses. LocusPoint would be interested in exploring this possibility if it is feasible from the Commission's perspective.

<sup>26</sup> 47 C.F.R. § 15.407

<sup>27</sup> 47 C.F.R. § 96.53

**REDACTED – FOR PUBLIC INSPECTION**

In addition, a combination of power, time, and location mitigation methods might be able to promote increased efficiency of wireless spectrum use in the broadcast channel. For example, a combination of low power transmitters that operate in indoor locations where broadcast TV receivers are absent would likely be able to operate simultaneously without causing interference to broadcast reception. Allowing time-sharing approaches may potentially allow [REDACTED]

The engineering of non-broadcast uses would need to be managed in order to provide interference protection. [REDACTED]

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

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

Though the exact contours of the services that might be offered pursuant to the requested waiver are unknowable at this time, LocusPoint will design any non-broadcast services to protect against interference, and the continued delivery of free broadcast content to consumers in New York and Chicago will not be threatened by a grant of this request. Furthermore, 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.

**REDACTED – FOR PUBLIC INSPECTION**

**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,

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