

REQUEST FOR WAIVER OF FREEZE

Barrington Marquette License LLC (“Barrington”) hereby requests a waiver of the freeze announced by the FCC’s Media Bureau on April 5, 2013, in order to file the instant application for a construction permit.¹ Barrington seeks a waiver to permit it to file and obtain processing of an application for a construction permit to increase the power of WLUC-TV, Marquette, Michigan (“WLUC”), from an ERP of 63 kW to 83 kW, and to alter the height of radiation center above average terrain from 257 m to 262 m. WLUC is an affiliate of NBC, and WLUC’s multicast channel WLUC-DT2 is a FOX affiliate. WLUC provides a full complement of local news, weather, and other coverage on issues of interest to the Upper Peninsula community.

The Media Bureau has stated that it will grant requests for waiver of the freeze on service area expansions announced in the *Freeze Notice* “on a showing of good cause and when grant of the waiver will serve the public interest.”² Grant of the requested waiver would serve the public interest for a number of reasons.

First, the proposed application would enable Barrington to make substantial improvements to its free, over-the-air digital television service. In addition to being able to expand the number of viewers who receive WLUC’s signal, Barrington would be able raise the signal quality for viewers within WLUC’s existing service area. The median household income of Marquette, Michigan — WLUC’s community of license and the highest-population city within the Marquette designated market area — is substantially below the national average.³ Because lower income Americans depend disproportionately on free over-the-air service, the provision of high-quality service is especially important in the community served by WLUC.⁴

Second, the station has already invested all resources necessary to accomplish the power increase and increase in antenna height, and it is ready to provide the public with improved service as soon as it receives the necessary authority to do so. The FCC earlier had

¹ *Public Notice*, “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,” 28 FCC Rcd 4364 (April 5, 2013) (“*Freeze Notice*”).

² *Freeze Notice* at 1. See also 47 C.F.R. § 1.3 (stating the Commission rules “may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time”).

³ Compare U.S. Census Bureau, Marquette (city), Michigan, Quick Facts, <http://quickfacts.census.gov/qfd/states/26/2651900.html> (stating that Marquette median household income from 2007-2011 was \$36,967), with U.S. Census Bureau, USA Quick Facts <http://quickfacts.census.gov/qfd/states/00000.html> (stating that the U.S. median household income from 2007-2011 was \$52,762).

⁴ See Press Release, National Association of Broadcasters, Over-the-air TV Viewership Soars to 54 Million Americans (June 18, 2012), available at <http://www.nab.org/documents/newsroom/pressRelease.asp?id=2761>.

granted WLUC a construction permit for the same set of modifications that it proposes in the instant application.⁵ Barrington completed all necessary work to make the authorized changes, but due to circumstances beyond its control — namely, the absence for medical reasons of a key employee on and around the deadline to construct the maximized facility — WLUC failed to apply for a license to cover the construction permit prior to its expiration.⁶ Immediately upon grant of a new construction permit, Barrington would be prepared to commence maximized operations and apply for a license to cover the permit.

Third, this application requires no waivers of the power limits, interference limits, or other FCC rules or policies. But for the *Freeze Notice*, Barrington already would have filed the application, and presumably it would have been processed and approved in the ordinary course. Indeed, the prior application filed by Barrington for the same change was granted within less than two weeks of filing.⁷

Finally, to the extent that it is consistent with the Spectrum Act to set as a chief goal of the repacking process the reallocation of “the maximum amount of UHF band spectrum” from television stations to other wireless uses (and Barrington disagrees on this point),⁸ imposing a freeze on the processing of this application would not advance that goal. WLUC’s signal only covers areas in rural Michigan. These rural areas do not have congested channels, and they are not facing any spectrum shortage. Thus, the modification requested here will not measurably constrain the Commission’s flexibility in the repacking.

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Barrington is ready to bring WLUC viewers the benefits of improved service as soon as it is permitted to do so. Accordingly, and for the reasons stated herein, Barrington respectfully requests a waiver of the freeze to permit it to obtain processing of the instant application.

⁵ See FCC File No. BPCDT-20041021ADR.

⁶ Because it did not obtain a license to cover, Barrington never activated or operated the maximized facility.

⁷ See FCC File No. BPCDT-20041021ADR.

⁸ See *Freeze Notice* at 1-2, citing *Expanding the Economic and Innovative Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, para. 50 (2012). Several commenters have explained that this goal is not consistent with or required by the Spectrum Act. See, e.g., Comments of the National Association of Broadcasters, Docket No. 12-268, at 7-9 (Jan. 25, 2013).