

Request for Waiver of Freeze

Barrington Kirksville License LLC (“Barrington”) amends the instant application in order to request a waiver of the freeze announced by the FCC’s Media Bureau on April 5, 2013.¹

Barrington filed this application in order to improve the service received by viewers of KTVO, Kirksville, Missouri. It seeks to increase KTVO’s power to 174 kW. This power increase will entail an expansion of KTVO’s service area. 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 this application would serve the public interest by enabling KTVO to make substantial improvements to its free, over-the-air digital television service, addressing service losses that viewers have suffered since the digital transition. Accordingly, Barrington respectfully requests a waiver of the freeze.

I. KTVO’s Requested Power Increase Will Dramatically Improve Reception and Help to Address the Station’s Lack of Replication of Its Former Analog Service Area.

KTVO currently has a limited coverage area, and the requested power increase — which complies with the maximum power limits established by the Commission’s rules — will permit more viewers to receive the station’s signal. KTVO is affiliated with both the ABC and CBS television networks.

By way of background, the digital allotment that the Commission initially authorized for the station on Channel 33 was for 1,000 kW — more than ten times the power level requested here, at a higher antenna height than the station currently uses (339 meters HAAT instead of the station’s current 290 meters HAAT).³ That initial digital allotment would have permitted the KTVO to replicate its former analog service area.⁴ Instead of taking the opportunity to build the 1,000 kW facility, however, the station’s former owner constructed a much smaller facility operating at just 87 kW.

The current 87 kW facility dramatically fails to replicate the station’s analog service area. Indeed, while the original 1,000 kW digital allotment established for the station

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,” DA 13-618 (April 5, 2013) (“*Freeze Notice*”).

² *Freeze Notice* at 1. See also 47 C.F.R. § 1.3.

³ See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418, at Appendix B (1998).

⁴ KTVO used to transmit its analog signal on low VHF Channel 3, at 100 kW and 339 meters HAAT.

was predicted to serve 352,000 viewers,⁵ the 87 kW facility that the station's former owner chose to construct serves only 149,000 viewers — less than half of what the 1,000 kW facility could have served.⁶ The substantial loss of service entailed by KTVO's transition from analog operations on Channel 3 to a limited, 87 kW digital facility on Channel 33 is illustrated in Attachment 1, attached hereto.⁷

By boosting its power, KTVO will be able to expand its coverage at the fringes of its service area and thereby restore service to many viewers that lost service from the station in connection with the digital transition. The recovered population and service area is shown in Attachment 2.⁸ As shown in Exhibit B, there are over 8,500 viewers predicted to be served in the gain area. These viewers have been missing out on valuable programming provided by KTVO, such as KTVO's local news programming (which includes Spanish-language news programming), emergency information, programming from the ABC and CBS broadcast television networks, and a range of other informational and educational programming.

Thus, there is good cause for a waiver of the freeze. KTVO's request to increase power would bring the station closer to replicating its former analog service area, enabling restoration of the station's free, over-the-air service to many viewers who have been lacking it since the digital transition.

II. A Waiver Is Necessary to Serve the Interests of Equity and Fundamental Fairness.

Barrington also respectfully submits that a refusal to process this application would be fundamentally unfair and would penalize the station and its viewers without advancing the purpose of the freeze.

First, this application requires no waivers of the power limits, interference limits, or other FCC rules or policies. It is a routine application that, but for the *Freeze Notice's* retroactive application of a freeze on pending applications, presumably would have been granted in the ordinary course.

Second, in order to prepare this application, the station invested substantial resources in the engineering and purchase of transmission components necessary to accomplish the power increase. The station is prepared to commence operations at 174 kW immediately upon a grant of the application. With KTVO having made the substantial investments necessary to pursue this routine power increase, and with viewers awaiting restoration of free, over-the-air

⁵ *Id.*

⁶ See *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking, 22 FCC Rcd 15581, at Appendix B (2007).

⁷ See Attachment 1 (available online at http://transition.fcc.gov/dtv/markets/maps_current/Ottumwa_IA-Kirksville_MO.pdf).

⁸ See Attachment 2, Exhibits A and B (showing current and proposed coverage, respectively).

service from KTVO, it would not be fair to the station or to the viewing public to delay indefinitely this major improvement in the station's service.

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),⁹ imposing a freeze on the processing of this application would not advance that goal. KTVO's signal only covers areas in rural Missouri and rural Iowa. 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, if the Commission decides to protect maximizations that post-date the enactment of the Spectrum Act — and Barrington believes that it should.

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KTVO's former owner constructed a limited digital facility with far less coverage than it could have. The small digital footprint deprives many former analog viewers of access to the station's signal. Barrington has made a concerted effort to study and resolve this problem, and it has invested in an expensive engineering solution that will help to restore service to many viewers. The station is prepared to implement this solution immediately upon obtaining FCC approval, which except for the retroactive application of the *Freeze Notice*, would have been expected in the ordinary course. Application of the freeze to this application is not in the public interest, and Barrington respectfully requests a waiver of the freeze and grant of this application.

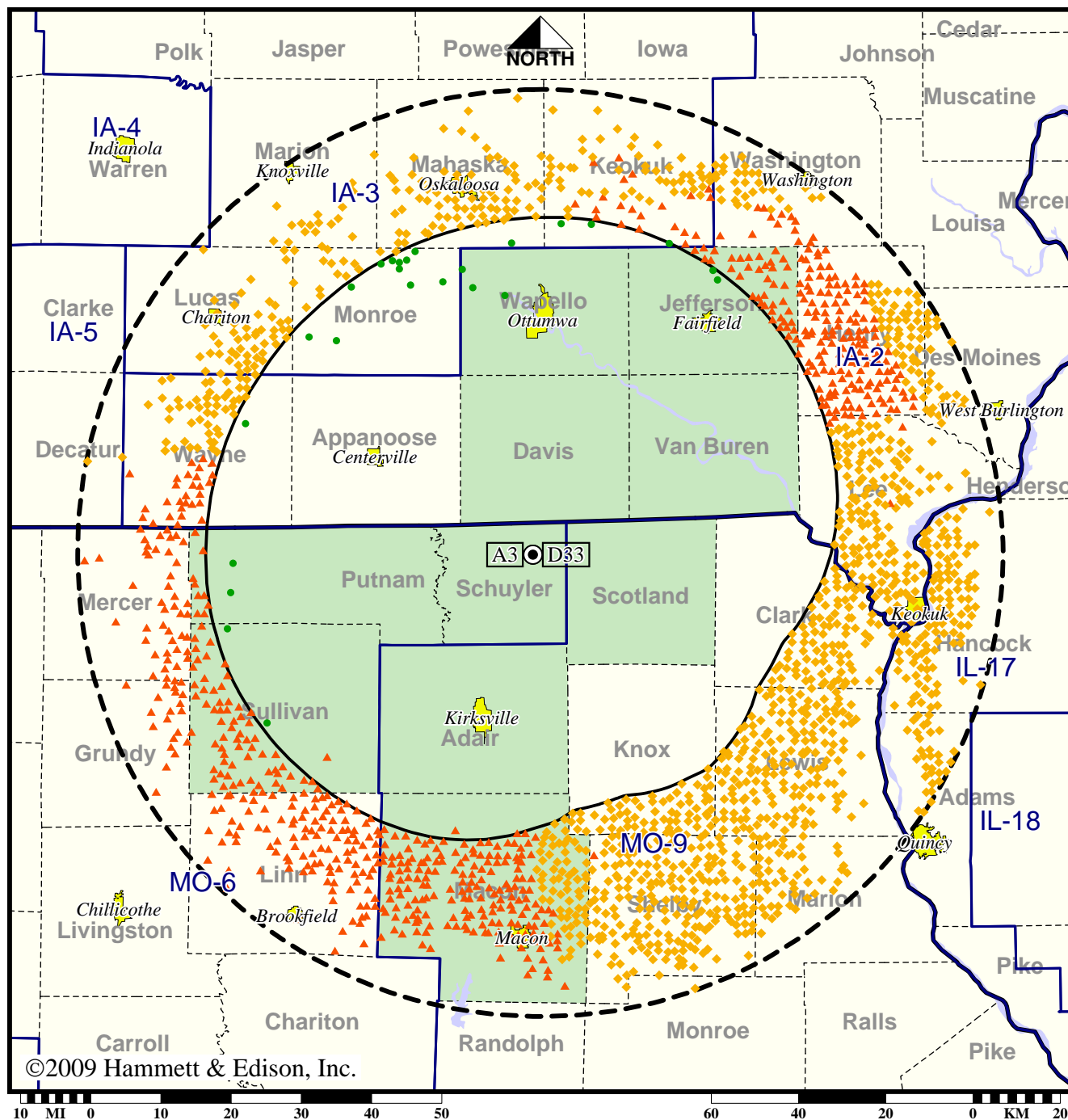
⁹ See *Freeze Notice* at 1-2, citing *Expanding the Economic and Innovative Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, para. 50 (2012). Several commenters have explained that this goal is not consistent with or required by the Spectrum Act.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

Attachment 1

TV Station KTVO • Analog Channel 3, DTV Channel 33 • Kirksville, MO

Expected Operation on June 13: Licensed

**Digital License (solid): 87.0 kW ERP at 290 m HAAT, Network: ABC
vs. Analog (dashed): 100 kW ERP at 339 m HAAT, Network: ABC**

Market: Ottumwa, IA-Kirksville, MO

- Coverage gained after DTV transition
- No symbol = no change in coverage
- ◆ Coverage lost but still served by same network
- ▲ Coverage lost and no other service by same network

Analog service	248,873	persons
Digital service	149,805	
Analog loss	99,484	
Digital gain	416	
Net gain	-99,068	

Map set 1

BLCDT-20030604AAC
KTVO Digital License

Attachment 2

KTVO-D

BLCDT20030604AAC
Latitude: 40-31-47 N
Longitude: 092-26-29 W
ERP: 87.00 kW
Channel: 33
Frequency: 587.0 MHz
AMSL Height: 552.3 m
Elevation: 278.3 m
Horiz. Pattern: Directional
Vert. Pattern: Yes
Elec Tilt: 0.0
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0050
Dielec Const: 15.0
Refractivity: 301.0
Receiver Ht AG: 10.0 m
Receiver Gain: 0 dB
Time Variability: 90.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast

Predicted 40.6 dB
F(50,90) NL Contour

Jeremy Ruck & Associates, Inc.

Interference-Free Population: 148,368
Population based on 2010 Census data

> 40.6 dBu

- ☐ KTVO-D (33)
- ☐ K33AC-D (33)
- ☐ K33GU (33Z)
- ☐ K33GU-D.C (33)
- ☐ K33IC (33-)
- ☐ K33IC-D.C (33)
- ☒ K33MN-D.C (33)
- ☐ K34CW (34-)
- ☐ KAAL-D (33)
- ☐ KBIN-D (33)
- ☐ KBIN-TV-D (33)
- ☐ W33AY-D (33)
- ☐ W33DV-D.C (33)
- ☐ WFBN-LP (33-)
- ☐ WQEC-D (34)
- ☒ WTJR-D (32)

Exhibit A
Licensed DTV Service Area
KTVO - Kirksville, Missouri
Barrington Kirksville License LLC
May, 2013

Scale 1:900,000
0 10 20 30 km

KTVO-D.A

BPCDT20130206ADL
Latitude: 40-31-47 N
Longitude: 092-26-29 W
ERP: 174.00 kW
Channel: 33
Frequency: 587.0 MHz
AMSL Height: 552.3 m
Elevation: 278.3 m
Horiz. Pattern: Directional
Vert. Pattern: Yes
Elec Tilt: 0.0
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0050
Dielec Const: 15.0
Refractivity: 301.0
Receiver Ht AG: 10.0 m
Receiver Gain: 0 dB
Time Variability: 90.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast

Predicted 40.6 dB
F(50,90) NL Contour

Jeremy Ruck & Associates, Inc.

Interference-Free Population: 156,950
Population based on 2010 Census data

- ☐ KTVO-D.A (33)
- ☐ K33AC-D (33)
- ☐ K33GU (33Z)
- ☐ K33GU-D.C (33)
- ☐ K33IC (33-)
- ☐ K33IC-D.C (33)
- ☒ K33MN-D.C (33)
- ☐ K34CW (34-)
- ☐ KAAL-D (33)
- ☐ KBIN-TV-D (33)
- ☐ W33AY-D (33)
- ☐ W33DV-D.C (33)
- ☐ WFBN-LP (33-)
- ☐ WQEC-D (34)
- ☒ WTJR-D (32)

