

REQUEST FOR WAIVER

In this application, VideoIndiana, Inc. (“VideoIndiana”), licensee of WTHR, Indianapolis, Indiana (“WTHR” or “the Station”), proposes to increase its maximum effective radiated power (“ERP”) from 42.1 kW to 77 kW without altering its existing physical facilities. The Station accordingly requests a corresponding waiver of the ERP limits in Section 73.622(f) of the Commission’s rules, as well as a waiver of the limitation imposed by the *Public Notice* released April 5, 2013 on the filing and processing of certain modification applications. The Station has invested substantial and sustained time, expense and resources over the past several years, both to validate that such a power increase would help restore consistent service to viewers who were able to receive the Station’s analog signal before the digital transition but who now cannot receive a consistent signal and to obtain the necessary consents to implement this solution. The power increase is therefore consistent with the Commission’s policy to improve viewers’ reception of high VHF DTV stations and serves the public interest.

I. Background

Since WTHR has transitioned to DTV, area viewers have repeatedly complained that they experience reception problems when trying to receive the station’s broadcasts. Viewers grew accustomed to tuning into WTHR’s analog channel 13 broadcasts, which operated with a maximum ERP of 316 kW at an antenna height above average terrain (“HAAT”) of 299 meters.¹ After the Station’s transition to DTV on channel 13 in 2009, however, many viewers who previously enjoyed good analog reception were no longer able to receive WTHR’s DTV signal.

In response, over the last several years, WTHR has worked diligently with the Commission to improve DTV reception for its longtime analog viewers. Although WTHR’s initial digital broadcasts on channel 13 were limited to a maximum ERP of 22 kW (using its former NTSC antenna at a HAAT of 299 meters),² the Station discovered and documented widespread reception shortfalls within months of its channel 13 DTV transition. On the basis of these ongoing reception problems, WTHR requested and received two incremental approvals to modestly increase its maximum ERP.³ The Station pursued an incremental approach so that requested power level increases did not exceed the level required to bring viewers good quality reception commensurate with analog viewing.

On January 18, 2012, the Commission granted WTHR’s application for a construction permit to broadcast at a maximum ERP of 42.1 kW.⁴ The Station promptly commenced

¹ See, e.g., FCC File No. BLCT-19840626KE. VideoIndiana also operated on DTV Channel 46 from 1998 to 2009.

² See FCC File No. BMPCDT-20080620AMQ.

³ See FCC File No. BMPCDT-20091016AAW (granting a construction permit modification from 22 kW to 30 kW ERP); FCC File No. BPCDT-20110328ABQ (granting a construction permit modification from 30 kW to 42.1 kW ERP).

⁴ See FCC File No. BPCDT-20110328ABQ.

operations at 42.1 kW and filed an application for a license to cover the construction permit authority, which was granted April 2, 2012.⁵

The Station's efforts to request authority for a further increase in maximum ERP (which date back as far as April 2012) were delayed significantly as a result of the need for the Station to coordinate with three separate stations for which WTHR's further increase in maximum ERP is predicted to cause interference. As described in additional detail below, the Station does not anticipate actual interference to any of these three stations to be more than *de minimis*, and all three stations have now entered into interference consent agreements with the Station. However, the resolution of the three interference consent agreements caused a more than twelve-month delay in the filing of WTHR's application to further increase power as necessary to bring its viewers ongoing reliable reception.

II. Authorizing WTHR to Broadcast at 77 kW ERP Serves the Public Interest

The Commission may grant a waiver of its rules where good cause is shown, which includes where such a waiver will serve the public interest.⁶ Authorizing the Station to operate at 77 kW would serve the public interest by restoring consistent service to viewers who previously received the Station's analog signal.

Reception Problems. A steady stream of callers have complained that they are unable to receive WTHR's digital signal on channel 13, despite previously receiving WTHR's analog signal on that channel. The Station regularly receives telephone calls and other communications and complaints from viewers regarding reception difficulties, as reflected in the attached informal log maintained by the Station's engineering department. The increase in power from 30 kW ND to 42.1 kW DA improved viewer reception. However, the continued stream of complaints received by the stations evidences ongoing and fairly widespread reception difficulties and the need for a further increase in ERP to 77 kW ND.

Moreover, a detailed report previously submitted to the Commission documented the Station's significant and widespread reception difficulties because of its digital operation on VHF channel 13.⁷ Many of the Station's analog viewers remain unable to reliably receive WTHR's digital signal, especially during inclement weather. As described in the previously filed report, WTHR conducted interviews of viewers and took measurements in viewers' homes following WTHR's ERP increases from 22kW ND to 30 kW ND in February 2010 and then to 42.1 kW DA in June 2011 (at which it was operating pursuant to special temporary authority, *see* FCC File No. BDSTA-20110510ACM, at that time). These studies documented that the increase in ERP to 42.1 kW DA improved viewers' reception of WTHR's VHF DTV signal, but that there remained viewer reception problems, particularly during inclement weather.⁸ The following

⁵ *See* FCC File No. BLCDDT-20120127AIE.

⁶ *See* 47 C.F.R. § 1.3; *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷ *See* Engineering Statement, Appendix A, FCC File No. BDSTA-20110510ACM. The report noted that the Station's power would have to be "dramatically increased." *Id.*

⁸ *See* Engineering Exhibit, FCC File No, FCC File No. BPCDDT-20110328ABQ.

reports are representative of the reception difficulty that viewers who received WTHR's analog signal have continued to experience with reception of WTHR's DTV signal, even at 42.1 kW DA:

- Even after WTHR's increase in ERP from 30 kW ND to 42.1 kW DA, one representative household's primary television set continues to fail to capture WTHR RF 13 (or WISH RF 9), although television set now pauses on channel 13 as it tries to lock the stream. It is now possible to obtain marginal reception of WTHR RF 13 on bedroom converter box with RCA "rabbit ears/loop" antenna. Field tests documented these issues. (Location was a senior apartment facility in a retirement community in Indianapolis, Indiana, 20.2 miles away.)
- A second representative household reported that, while reception of WTHR's channel 13 VHF DTV signal improved following increase in ERP from 30 kW ND to 42.1 kW DA, WTHR's signal (along with WISH RF 9) remains the weakest of the viewer's over-the-air signals. Further, WTHR's signal pixelates during heavy rainstorms. Field tests were consistent with this report. (Location was a household in Edinburgh, Indiana, 41.5 miles away.)
- A third representative household reported that, at least when an indoor antenna and converter were employed, reception of WTHR's signal was reliable at 42.1 kW DA during good weather. The signal continues to fade during stormy weather. (Location was a household in Franklin Indiana, 31.1 miles away.)

The Station's field tests suggest that a further ERP increase is still necessary to replicate and restore service to many viewers within WTHR's Grade A/B contours who previously enjoyed good analog reception.

Power Increases. The Commission has expressly endorsed increasing the maximum ERP for stations in WTHR's predicament. Recognizing that many "consumer[s] who w[ere] previously able to receive a station's analog VHF signal [are] not able to receive that station's digital VHF signal," the Commission in November 2010 proposed an across-the-board increase in the maximum allowed ERP to *120 kW* for high-VHF stations in Zone I (like WTHR) so long as their antenna HAAT is 305 meters or less.⁹ The Commission stated that it "believe[s] that, as demonstrated by the stations that have already increased their transmitted power, such increases can provide some level of improvement in the reception of VHF television service."¹⁰ Moreover, the Commission stated its view that "the interests of making the VHF channels more useful to stations and consumers outweigh [other] concerns."¹¹ Although in April 2012 the Commission deferred a final decision to implement this blanket approach, it did so in part because it found that "the Media Bureau's current practice of addressing service problems on VHF channels on a

⁹ *Notice of Proposed Rulemaking: Innovation in the Broadcast Television Bands*, 25 FCC Rcd. 16,498, 16,512, 16,513 ¶¶ 43, 48 (rel. Nov. 30, 2010) ("NPRM").

¹⁰ *Id.* at 16,513 ¶ 48.

¹¹ *Id.* at 16,514 ¶ 49.

case-by-case basis, including through license modifications to allow power increases and changes in channels, have effectively resolved many of these problems.”¹² In light of WTHR’s viewers’ significant reception problems and its reasonable request of 77 kW ERP—well below the 120 kW proposed by the Commission for stations like WTHR—WTHR is a perfect example of a station for which the Commission has considered increased power appropriate.

Interference. Increasing WTHR’s maximum ERP to 77 kW would cause minimal predicted interference to other stations. According to the methodology prescribed by Section 73.616(e) of the Commission’s rules, the Longley-Rice model predicts that such an increase in power would cause more than *de minimis* interference to only three stations: WBKO, Bowling Green, Kentucky; WREX, Rockford, Illinois; and WCIX, Springfield, Illinois. All three stations have consented to such interference; their written consents are attached to this application. Moreover, the Station believes that real-world interference to these stations’ viewers would be *de minimis*. VHF reception problems cause the Longley-Rice model to overpredict areas in which viewers can actually receive these stations’ signals.

International Coordination. Although WTHR’s antenna is 338 km from the Canadian border (and thus within the 400 km coordination zone), no interference is predicted to any Canadian station and no F(50,10) interfering contours reach the Canadian border. The nearest Canadian co-channel station (CKCO-TV, Kitchener, Ontario) is more than 600 km away, and the nearest Canadian adjacent channel (Channel 12, Chatham, Ontario) is more than 440 km distant.

III. Waiver of the Freeze on Modification Applications Is In the Public Interest

The Bureau has stated that it will waive the filing limitation imposed by the April 5 *Public Notice* “when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public.”¹³ For the reasons described above, the present application to increase effective ERP to 77 kW serves the public interest and is needed to restore quality service to WTHR’s viewers who previously were able to receive WTHR’s analog signal but still have difficulty receiving WTHR’s post-transition digital signal despite being located in WTHR’s digital service area. As noted above, ongoing viewer complaints and field tests evidence that there remain widespread reception difficulties for many viewers throughout WTHR’s Grade A/B contours who previously enjoyed good analog reception.

Moreover, the objectives of the *Public Notice* are not undermined by granting WTHR’s proposed power increase. The filing limitations imposed under the *Public Notice* were adopted “to avoid frustrating the central goal of [the broadcast television incentive auction to repurpose] the maximum amount of UHF band spectrum for flexible licensed and unlicensed use.” However, WTHR’s proposed power increase has very limited, if any, implications for the auction of UHF band spectrum. WTHR is licensed on channel 13, a high-band VHF channel, in

¹² *Report and Order: Innovation in the Broadcast Television Bands*, 27 FCC Rcd. 4616, 4621 ¶ 10 (rel. Apr. 27, 2012).

¹³ *Public Notice* (Apr. 5, 2013)..

the Indianapolis market. Further, the very same Notice of Proposed Rulemaking that announced the incentive auction set forth a second and equal “central goal,” namely to “preserv[e] a healthy, diverse broadcast television service.”¹⁴ Ensuring that viewers within WTHR’s service area have reliable access to VHF band signals to which they received good analog reception is essential to the preservation of healthy a broadcast television service.

* * *

As the Commission is aware from prior WTHR applications, VideoIndiana has worked diligently towards identifying possible solutions to help restore service to its affected viewers. Upon determining that the January 2012 incremental power level increase to 42.1 kW was not adequate to restore good quality service to all its viewers, the Station has worked diligently to determine that a further increase to 77 kW is the most efficient and effective means to restore good quality service to the viewers in its service area. The Station has invested tremendous resources over the past more than twelve months to memorialize interference consent agreements with three stations that are predicted to receive more than *de minimis* interference.

The reception problems suffered by WTHR’s viewers—coupled with the fact that the power requested is less than the power limits for high VHF stations suggested by the Commission in the *NPRM* —demonstrate that a modest increase of WTHR’s maximum ERP to 77 kW is needed to restore good quality service to WTHR’s viewers and is therefore in the public interest.

¹⁴ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, ¶10 (2012) (“Incentive Auction NPRM”) (“Our central goals are to repurpose the maximum amount of UHF band spectrum for flexible licensed and unlicensed use in order to unleash investment and innovation, benefit consumers, drive economic growth, and enhance our global competitiveness, while at the same time preserving a healthy, diverse broadcast television service.”). See generally Letter from Rick Kaplan, Executive Vice President, Strategic Planning, National Association of Broadcasters to William Lake, Chief, Media Bureau, FCC (May 6, 2013) (questioning generally whether freeze on applications serve public interest).

Log of Viewer Complaints
WTHR's DTV Signal at 42.1 kW DA

Date	First	Last	Address	City	State	Zip	Phone	e-mail	distance	level	Height	In Ant	Attic	Out
1/12/2012				Greenwood	IN	46143			23.6	-35.9	6	Yes		
1/14/2012				Frankfort	IN	46041			24.4	-46.4	25			Yes
1/17/2012				Speedway	IN	46224			10.5	-32	6	Yes		
1/25/2012				Greenwood	IN	46143			23.6	-54.1	6	Yes		
2/2/2012				Indianapolis	IN	46237			19.8	-46.9	6	Yes		
2/3/2012				Indianapolis	IN				10	-35.5	6	No!		
2/3/2012				Beech Grove	IN	46107			16.6	-32.2	10	Yes		
2/4/2012				Indianapolis	IN	46204			10.4	-28.1	12			Yes
2/5/2012				Greenwood	IN	46142			22.2	-35.4	6	Yes		
2/5/2012				Martinsville	IN				30	-55	30			Yes
2/8/2012				Indianapolis	IN	46220			4	-19.2	25	Yes		
2/16/2012				Indianapolis	IN	46204			10.8	-28.4	20	Yes		
2/17/2012				Indianapolis	IN	46217			19.2	-34.2	20		Yes	
3/3/2012				Brookston	IN	47923			59	-74.3	20			Yes
3/26/2012				Indianapolis	IN	46234			13	-29.5	6	Yes		
4/23/2012				Indianapolis	IN	46220			5	-21.1	6	Yes		
4/28/2012				Indianapolis	IN							Yes		
5/3/2012				Indianapolis	IN	46229			13.2	-38.2	6	Yes		
5/11/2012				Indianapolis	IN	46227			16.4	-32.4	6	Yes		
5/30/2012				Lafayette	IN				50	-70	6	Yes		
6/6/2012				Anderson	IN				25.3	-65.6	6			
6/11/2012				Greenwood	IN	46146			22.6	-37.3	6	Yes		
6/11/2012				Indianapolis	IN				13.4	-34.3	6	Yes		
6/21/2012				New Palestine	IN				21	-50	6	Yes		
7/9/2012				Indianapolis	IN	46237			17.8	-35.8	6	Yes		
7/18/2012				Indianapolis	IN	46227			16.2	-34.9	6	Yes		
7/26/2012				Indianapolis	IN	46228			4.9	-23.8	6			Yes
8/1/2012				Greenwood	IN				22	-37.5	10		Yes	
8/2/2012				Greensburg	IN	47240			54.9	-73.7	20			Yes
8/6/2012				Danville	IN	46122			20.2	-38	6	Yes		
8/9/2012				Kokomo	IN	46901			44.5	-69.2	15			Yes
8/15/2012				Edinburgh	IN	46124			41.2	-64.2	25			Yes
8/15/2012				Mooresville	IN	46158			23.8	-53.7	15			Yes

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WTHR's DTV Signal at 42.1 kW DA

8/16/2012	[REDACTED]	[REDACTED]	[REDACTED]	Brownsburg	IN	46112	[REDACTED]	[REDACTED]	12.1	-35.5	6	Yes	
8/30/2012	[REDACTED]	[REDACTED]	[REDACTED]	Greentown	IN	46936	[REDACTED]	[REDACTED]	39.5	-60.8	10	Yes	
9/1/2012	[REDACTED]	[REDACTED]	[REDACTED]	Attica	IN	47918	[REDACTED]	[REDACTED]	57.4	-84.7	40		Yes
9/4/2012	[REDACTED]	[REDACTED]	[REDACTED]	Indianapolis	IN	46237	[REDACTED]	[REDACTED]	20.2	-39.3	6	Yes	
9/9/2012	[REDACTED]	[REDACTED]	[REDACTED]	Albany	IN	47320	[REDACTED]	[REDACTED]	51.7	-76.4	20	Yes	Yes
9/9/2012	[REDACTED]	[REDACTED]	[REDACTED]	Indianapolis	IN	46259	[REDACTED]	[REDACTED]	23.1	-48.8	10	Yes	
9/10/2012	[REDACTED]	[REDACTED]	[REDACTED]	Indianapolis	IN	46227	[REDACTED]	[REDACTED]	19.6	-35.3	15	Yes	Yes
9/10/2012	[REDACTED]	[REDACTED]	[REDACTED]	Alexandria	IN		[REDACTED]	[REDACTED]	35	-58	6	Yes	
9/12/2012	[REDACTED]	[REDACTED]	[REDACTED]	Bainbridge	IN		[REDACTED]	[REDACTED]	36.4	-66.8	20		Yes
9/13/2012	[REDACTED]	[REDACTED]	[REDACTED]	Fishers	IN	46037	[REDACTED]	[REDACTED]	12.4	-30.1	6	Yes	
9/17/2012	[REDACTED]	[REDACTED]	[REDACTED]	Avon	IN	46037	[REDACTED]	[REDACTED]	16.5	-50.5	6	Yes	
9/22/2012	[REDACTED]	[REDACTED]	[REDACTED]	Indianapolis	IN	46203	[REDACTED]	[REDACTED]	12.7	-29.8	6	Yes	
9/23/2012	[REDACTED]	[REDACTED]	[REDACTED]	Peru	IN		[REDACTED]	[REDACTED]	59	-76	20		Yes
9/26/2012	[REDACTED]	[REDACTED]	[REDACTED]	Fishers	IN	46037	[REDACTED]	[REDACTED]	13.5	-47.7	6	Yes	
9/27/2012	[REDACTED]	[REDACTED]	[REDACTED]	New Castle	IN	47362	[REDACTED]	[REDACTED]	44.1	-64.7	10	Yes	
9/27/2012	[REDACTED]	[REDACTED]	[REDACTED]	Logansport	IN	46947	[REDACTED]	[REDACTED]	59.9	-79.7	25		Yes
10/5/2012	[REDACTED]	[REDACTED]	[REDACTED]		IN		[REDACTED]	[REDACTED]				Yes	
10/9/2012	[REDACTED]	[REDACTED]	[REDACTED]	Indianapolis	IN	46208	[REDACTED]	[REDACTED]	7.3	-25	25	Yes	
10/26/2012	[REDACTED]	[REDACTED]	[REDACTED]	Indianapolis	IN	46237	[REDACTED]	[REDACTED]	17.3	-34.6	6	Yes	
11/14/2012	[REDACTED]	[REDACTED]	[REDACTED]	Indianapolis	IN	46220	[REDACTED]	[REDACTED]	6	-22	6	Yes	
11/26/2012	[REDACTED]	[REDACTED]	[REDACTED]	Shelbyville	IN	46176	[REDACTED]	[REDACTED]	40.4	-55.3	20		Yes
11/28/2012	[REDACTED]	[REDACTED]	[REDACTED]	Crawfordsville	IN	47933	[REDACTED]	[REDACTED]	44.3	-73.7	20		Yes
12/22/2012	[REDACTED]	[REDACTED]	[REDACTED]		IN		[REDACTED]	[REDACTED]					
12/30/2012	[REDACTED]	[REDACTED]	[REDACTED]	New Palestine	IN	47163	[REDACTED]	[REDACTED]	19.6	-46.8	6	Yes	
1/9/2013	[REDACTED]	[REDACTED]	[REDACTED]		IN		[REDACTED]	[REDACTED]	45				
1/11/2013	[REDACTED]	[REDACTED]	[REDACTED]	Atlanta	IN	46031	[REDACTED]	[REDACTED]	24.4	-57.5	15		Yes
1/13/2013	[REDACTED]	[REDACTED]	[REDACTED]	Crawfordsville	IN		[REDACTED]	[REDACTED]	39	-65			Yes
1/23/2013	[REDACTED]	[REDACTED]	[REDACTED]	Acton	IN		[REDACTED]	[REDACTED]	22	-50	6	Yes	
1/24/2013	[REDACTED]	[REDACTED]	[REDACTED]	Indianapolis	IN	46205	[REDACTED]	[REDACTED]	7.6	-29.6	1	Yes	
2/4/2013	[REDACTED]	[REDACTED]	[REDACTED]	Plainfield	IN	46168	[REDACTED]	[REDACTED]	19.9	-49	6	Yes	
2/4/2013	[REDACTED]	[REDACTED]	[REDACTED]	Mooresville	IN	46158	[REDACTED]	[REDACTED]	25	-50	6		
2/16/2013	[REDACTED]	[REDACTED]	[REDACTED]	Indianapolis	IN		[REDACTED]	[REDACTED]	4.3	-22.9	6	Yes	
3/3/2013	[REDACTED]	[REDACTED]	[REDACTED]	Indianapolis	IN	46217	[REDACTED]	[REDACTED]	19.5	-34.1	6		
3/11/2013	[REDACTED]	[REDACTED]	[REDACTED]	Lafayette	IN	47909	[REDACTED]	[REDACTED]	44.1	-91.8	25		Yes

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WTHR's DTV Signal at 42.1 kW DA

3/11/2013	[REDACTED]	[REDACTED]	Modoc	IN	47358	[REDACTED]	[REDACTED]	59.7	-84	30		Yes
3/14/2013	[REDACTED]	[REDACTED]	Indianapolis	IN				3.3	-18.9	6	Yes	
4/14/2013	[REDACTED]	[REDACTED]	Indianapolis	IN	46220	[REDACTED]	[REDACTED]	6	-22.9	6	Yes	
4/25/2013	[REDACTED]	[REDACTED]	New Palestine	IN	46163	[REDACTED]	[REDACTED]	19.9	-37.6	25		Yes
4/28/2013	[REDACTED]	[REDACTED]	Indianapolis	IN	46217	[REDACTED]	[REDACTED]	19	-36.8	6	Yes	
5/4/2013	[REDACTED]	[REDACTED]	Indianapolis	IN	46201	[REDACTED]	[REDACTED]	11.5	-28.6	15	Yes	
5/13/2013	[REDACTED]	[REDACTED]	Columbus	IN		[REDACTED]	[REDACTED]	50.5	-72.2	35		Yes
5/28/2013	[REDACTED]	[REDACTED]	Greenwood	IN	46143	[REDACTED]	[REDACTED]	22.9	-50	20	Yes	
6/12/2013	[REDACTED]	[REDACTED]	Columbus	IN		[REDACTED]	[REDACTED]	51	-77	25	Yes	
6/16/2013	[REDACTED]	[REDACTED]		IN		[REDACTED]	[REDACTED]					