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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)
)
Amendment of Section 73.622(b))
Table of Allotments,)
Digital Television Broadcast Stations)
(Lexington, Kentucky))
)

MM Docket No. 01-83
RM-10085

To: Chief, Video Services Division
Mass Media Bureau

COMMENTS OF PAXSON LEXINGTON LICENSE, INC.

Paxson Lexington License, Inc. ("Paxson"), licensee of WAOM(TV),¹ by its attorney, hereby respectfully submits these comments in support of the Commission's *Notice of Proposed Rule Making* ("Notice") in the above-captioned proceeding. The *Notice* responds to a Petition for Rule Making ("Petition") by WLEX Communications, LLC ("WLEX Communications") requesting that the Commission amend Section 73.622(b), the DTV Table of Allotments, by substituting Channel 39 for Channel 22 for television station WLEX-DT, Lexington, Kentucky. According to Paxson's analysis, the proposed digital facilities of WLEX-DT on its assigned DTV Channel 22² is predicted to cause impermissible interference to WAOM-DT and preclude a grant of WAOM-DT's application for digital facilities. Grant of WLEX-DT's proposed channel substitution from Channel 22 to Channel 39 would resolve the apparent impermissible

¹ On May 29, 2001, Paxson acquired WAOM(TV) from B&C Kentucky, LLC ("B&C"). The Commission granted consent to assignment of the license for WAOM(TV) from B&C to Paxson on April 30, 2001. FCC File No. BALCT-20000228AAG.

² FCC File No. BPCDT-20000501ACR.

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interference to WAOM-DT and thereby clear the way for a prompt grant of WAOM-DT's application. Because this constitutes a more efficient use of the broadcast spectrum, Paxson accordingly urges the Commission to grant WLEX Communications' proposed channel substitution.

On October 19, 1999, WAOM(TV)'s prior licensee filed an application for authority to construct facilities for WAOM-DT on Channel 21.³ On February 1, 2001, the Commission granted the WAOM-DT application. On February 16, 2001, the Commission rescinded the grant and returned the application to pending status because it determined upon re-examination, "that [WAOM-DT's] application is mutually exclusive with another pending application."⁴

Paxson's consulting engineer has determined that the mutual exclusivity is due to the fact that the parameters proposed in WLEX-DT's pending application⁵ on assigned Channel 22 are predicted to cause impermissible interference to WAOM-DT. Even though Paxson's application does not cause impermissible interference to any other facility and Paxson apparently will not be required to modify its application, Paxson is unable to receive grant of its application until the interference issue is resolved.

The Commission can resolve the apparent conflict between WLEX-DT's and WAOM-DT's pending DTV construction permit applications by granting WLEX-DT's proposed channel substitution. Substitution of Channel 39 for Channel 22 for WLEX-DT would result in an efficient use of spectrum, as it apparently would clear the way for reinstatement of the grant of WAOM-DT's application, permit Paxson to move forward with the construction of WAOM-

³ FCC File No. BPCDT-19991020ACE.

⁴ *Exhibit A* (Letter from Clay C. Pendarvis, Chief, Television Branch, Video Services Division, Mass Media Bureau to B&C Kentucky, LLC, dated February 16, 2001).

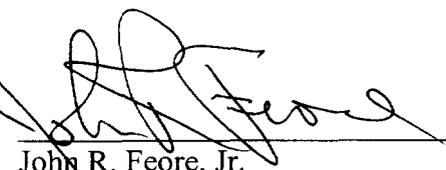
⁵ FCC File No. BPCDT-20000501ACR.

DT's facilities, and permit WLEX Communications to move forward with the construction of WLEX-DT's facilities on Channel 39.

THEREFORE, for the foregoing reasons, Paxson supports the proposed channel substitution of Channel 39 for Channel 22 for WLEX-DT, Lexington, Kentucky.

Respectfully Submitted,

PAXSON LEXINGTON LICENSE, INC.

By: 

John R. Feore, Jr.

Its Attorney

Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
202-776-2000

Dated: May 31, 2001

EXHIBIT A

Letter from Clay C. Pendarvis,
Chief, Television Branch,
Video Services Division, Mass Media Bureau
to B&C Kentucky, LLC, dated February 16, 2001



Federal Communications Commission
Washington, D.C. 20554

FEB 16 2001

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B & C Kentucky, L.L.C
9279 Dutch Hill Road
West Valley, NY 14171

In Re: BPCDT-19991020ACE
WAOM-DT
Morehead, KY
Facility ID: 23128

Dear Applicant:

The Commission recently granted your application to construct a new digital broadcast station in Morehead, KY. Upon re-examination, it was determined that your application is mutually exclusive with another pending application.

Accordingly, the action granting your application is hereby **RESCINDED**, and the application is being returned to pending status. We apologize for any inconvenience to you regarding this action. However, every effort will be made to complete our review in an expeditious manner, consistent with the procedures recently adopted by the Commission for processing mutually exclusive digital television applications.

Sincerely,

A handwritten signature in black ink, appearing to read "Clay Pendarvis".

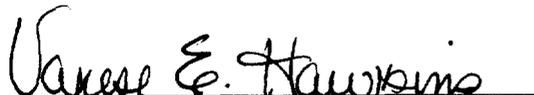
Clay C. Pendarvis
Chief, Television Branch
Video Services Division
Mass Media Bureau

cc: Vincent J. Curtis, Jr., Esq.

CERTIFICATE OF SERVICE

I, Vanese Hawkins, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC do hereby certify that on this 31st day of May, 2001, the foregoing "COMMENTS OF PAXSON LEXINGTON LICENSE, INC." were served via hand delivery to the following:

Scott S. Patrick, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036-6802
Counsel for WLEX Communications, LLC


Vanese Hawkins