

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

In the Matter of)
)
Amendment of Section 73.622(i) of) MB Docket No. _____
the Commission's Rules,)
DTV Table of Allotments) RM No. _____
(Traverse City, Michigan))

To: Office of the Secretary
Attn: Chief, Media Bureau

FILED/ACCEPTED
AUG 25 2009
Federal Communications Commission
Office of the Secretary

SUPPLEMENT TO PETITION FOR RULEMAKING

Barrington Traverse City License LLC ("Barrington"), licensee of Station WPBN-TV, Traverse City, Michigan, by counsel, hereby submits this Supplement to its July 24, 2009 Petition for Rule Making (the "Petition"). In the Petition, Barrington requested that the Commission amend the post-transition DTV Table of Allotments to change WPBN's digital allotment from Channel 7 to Channel 47.¹ This channel substitution is necessary and in the public interest because it will resolve potential interference to and from Station WOOD-TV, Grand Rapids, Michigan, which has also been assigned post-transition Channel 7. Barrington noted at footnote 9 of the Petition that the proposed changes to WPBN-TV might require a continued satellite waiver because Station WTOM-TV, Cheboygan, Michigan operates as a satellite station of WPBN-TV. At the request of FCC staff, the purpose of this Supplement is to provide additional information on the WPBN-TV/WTOM-TV satellite waiver.

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¹ Barrington also proposed to operate a "replacement translator" on channel 50 pursuant to the Commission's recent *Replacement Translator Order*. See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations, Report and Order*, 24 FCC Rcd 5931 (2009). The Commission has already granted this application. See BDRTCDDT-20090724ACJ.

I. BACKGROUND

1. In the *Eighth R&O* in MM Docket No. 87-268, the Commission allotted Channel 7 to WPBN-TV for post-transition operation.² Wood License Company, LLC (“Wood License”), licensee of WOOD-TV, filed a Petition for Reconsideration of the *Eighth R&O*, which claimed that the post-transition WPBN-TV facilities would cause impermissible interference to the post-transition operation of WOOD-TV on co-channel 7. The Wood License petition is pending, and thus the WPBN-TV post-transition facilities are not final. Wood License also objected to the WPBN-TV construction permit application on post-transition Channel 7.³ The FCC also has yet to act on this application.⁴

2. It is Barrington’s understanding that WPBN-TV is one of very few stations in the country (and perhaps the only station) that does not have a construction permit or license to operate on a post-transition digital channel. It is also unclear when the Commission will act on WPBN-TV’s construction permit application and the associated pleadings filed by WOOD License. Given this uncertainty and to resolve the impasse and move into the digital world on a sure footing, Barrington filed the Petition to operate WPBN-TV on Channel 47.

3. As discussed in more detail in the Petition, the public interest benefits that result from changing WPBN-TV’s allotment from Channel 7 to Channel 47 are substantial. The change will resolve the long-standing proceeding involving WPBN-TV and WOOD-TV over post-transition use of digital Channel 7 in Traverse City and Grand Rapids, Michigan. Channel 47 can be allotted in compliance with all pertinent FCC technical rules and regulations. Canada

² See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order, 23 FCC Rcd 4220, ¶¶ 49-51 (2008) (“*Eighth R&O*”).

³ See BPCDT-20080321ACW.

⁴ WPBN-TV is currently operating with reduced digital coverage on Channels 7 and 50 pursuant to special temporary authority (STA). See BDSTA-20081230AAJ; BDSTA-20081230AAK.

has approved use of Channel 47 at the site and with the parameters that Barrington proposes to operate. The “pre-constructed” nature of the facilities presents efficiencies that will speed implementation of the proposal and enable prompt construction by Barrington upon issuance of a construction permit. The combined Channel 47/50 operation will result in additional over-the-air NBC service to 233,546 persons, with only *de minimis* loss of service in very limited areas. In total, the proposal will result in service to 101.05 percent of the WPBN-TV pre-transition analog service population.

II. CONTINUED SATELLITE WAIVER.

4. Barrington operates WPBN-TV and WTOM-TV pursuant to a satellite waiver. This waiver was first granted in 1996⁵ and continued in 1998⁶ and 2006⁷ pursuant to the Commission’s satellite waiver policy. This policy establishes two tests for determining whether a station qualifies for a satellite waiver.⁸ Under the first test, the Commission presumes that an applicant qualifies for a waiver if: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station. If an applicant does not qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis, and grant the application if there are compelling circumstances that warrant approval.

5. Regarding the first criterion of the presumptive test, the operation of WPBN-TV on Channel 47 at the facilities specified in the Petition will result in city-grade overlap between

⁵ See Letter from Chief, Video Division, Media Bureau to Federal Enterprises, Inc. and Raycom Media, Inc. (September 24, 1996).

⁶ See John E. Hayes and William C. Zortman, 13 FCC Rcd 9407 (1998).

⁷ See Letter to Barrington Broadcasting LLC, 21 FCC Rcd 6477 (2006) (“2006 Satellite Waiver Letter”).

⁸ See Television Satellite Stations, 6 FCC Rcd 4214, 4213-15 (1991).

WPBN-TV and WTOM-TV, which is depicted in the attached Engineering Exhibit. This overlap is consistent with other satellite waivers granted by the Commission.⁹ Regarding the second criterion, WTOM-TV is the only full service TV station licensed to Cheboygan, Michigan, and thus Cheboygan qualifies as an underserved area.¹⁰ Regarding the third criterion, the Media Bureau noted in the *2006 Satellite Waiver Letter* that Barrington had not demonstrated that no alternative operator is ready to purchase and operate WTOM-TV as a full-service station. Rather, Barrington demonstrated that, because of the small size of the Traverse City-Cadillac DMA, WTOM-TV is not a viable stand alone station. This showing was based on a letter from Mr. Brian E. Cobb, President of CobbCorp, LLC and remains unchanged.¹¹ If necessary, Barrington will submit an updated letter from Mr. Cobb attesting to this fact in this proceeding.

6. The proposed operation of WPBN-TV and WTOM-TV does not presumptively qualify for a satellite waiver. In the *2006 Satellite Waiver Letter*, the Media Bureau granted Barrington a waiver under the *ad hoc* approach to operate WPBN-TV and WTOM-TV. The circumstances in this proceeding warrant a continued waiver under this approach. The move of WPBN-TV to Channel 47 will resolve the impasse in the WPBN-TV and WOOD-TV proceeding and result in service to 101.05 percent of the WPBN-TV pre-transition analog service population. This outweighs the city grade overlap between WPBN-TV and WTOM-TV created by WPBN-TV's move to Channel 47 at a new site. Barrington therefore continues to

⁹ See, e.g., *AT&T Corporation (Transferor) and LIN Holdings Corporation (Transferee)*, 13 FCC Rcd 4633, ¶ 33 (1998).

¹⁰ See *2006 Satellite Waiver Letter* at p. 2.

¹¹ Specifically, Mr. Cobb stated that the Traverse City-Cadillac DMA is a small television market. It included only four commercial television stations all of which operate satellite facilities in order to cover the geographically extended market. He further stated that the major population of the DMA is in the major cities in the market, Traverse City and Cadillac, neither of which is covered by the signal of WTOM-TV. These facts remain unchanged. According to Mr. Cobb, if the owner of WTOM-TV were to try to operate the station as an independently-programmed "stand alone" station, rather than as a satellite of WPBN-TV, it would not be able to affiliate with one of the four major television networks and most likely would not survive.

respectfully requests that the DTV Table be amended in accordance with the specifications set forth in the Petition.

Respectfully submitted,

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**Proposed WPBN-TV Ch. 47
With WTOM-TV Ch. 35 Satellite
City Grade Contour Overlap**

prepared for
Barrington Traverse City License LLC

August, 2009



WTOM-TV Ch. 35 Cheyboygan, MI (Lic)
48 dBu Contour (City Grade)
41 dBu Contour (Noise Limited)

Proposed WPBN-TV Ch. 47
48 dBu Contour (City Grade)
41 dBu Contour (Noise Limited)

Overlap Region
48 dBu Contour

Within 48 dBu Contour (City Grade)	Area (sq. km)	Population (2000 Census)
Proposed WPBN-TV Ch. 47	20,879.2	343,914
Licensed WTOM-TV Ch. 35	9,207.0	71,012
Overlap Region	1,082.5	22,064
Composite Total (unduplicated)	29,003.7	392,862

