

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.622(b),	)	MM Docket No. 00-240
Table of Allotments,	)	RM-9793
Digital Television Broadcast Stations.	)	
(Charlottesville, Virginia)	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: July 24, 2001**

**Released: July 26, 2001**

By the Chief, Video Services Division:

1. At the request of Commonwealth Public Broadcasting Corporation ("Commonwealth") (formerly Central Virginia Educational Telecommunications Corporation)<sup>1</sup>, licensee of noncommercial educational station WHTJ(TV), NTSC channel \*41, Charlottesville, Virginia, the Commission has before it the Notice of Proposed Rule Making ("Notice"), 15 FCC Rcd 22536 (2000), proposing the substitution of DTV channel \*46 for station WHTJ(TV)'s assigned DTV channel \*14. Commonwealth and Shenandoah Valley Educational Television Corporation ("Shenandoah"), licensee of television translator station W19BB, Charlottesville, Virginia, filed supporting comments. Commonwealth filed responsive comments.

2. Shenandoah filed comments supporting Commonwealth's proposal to substitute DTV channel \*46 for DTV channel \*14 in Charlottesville. However, it urges the Commission to retain DTV channel \*14 as a full-power DTV channel allotment in Charlottesville, and to incorporate that request in this proceeding. In this regard, Shenandoah states that the retention of channel \*14 as a DTV allotment at Charlottesville will permit it to apply for use of that channel as a displacement channel for its LPTV operation and upgrade that service to full power operation. Shenandoah further states that the retention of channel \*14 at Charlottesville is necessary in order to preserve its assignment to the DTV Table of Allotments since DTV channel \*14 could not pass the mileage separation requirements for an initial new DTV allotment. Shenandoah claims it is highly inequitable to Shenandoah and all potential petitioners for a full-power DTV allotment in Charlottesville to replace the only other channel (channel \*14) which could be retained in the Table of Allotments in compliance with the Commission's rules.

3. In response, Commonwealth urges the Commission to issue a Report and Order granting Commonwealth's channel substitution proposal. Commonwealth submits that in *Achernar Broadcasting Company*, 15 FCC Rcd 7808 (2000), the Commission directed the Mass Media Bureau to expedite this proceeding. Commonwealth argues that the consideration of

<sup>1</sup> Effective January 2, 2001, Central Virginia Educational Television Corporation changed its name to Commonwealth Public Broadcasting Corporation.

Shenandoah's request concurrently with Commonwealth's risks delay by inviting the submission of petitions for reconsideration by parties with interests specific to the retention of channel \*14, as a DTV allotment. Commonwealth notes that the Commission dealt with a similar situation in its *Report and Order* in MM Docket No. 99-346, released January 31, 2001, where the Commission concluded that a request to retain an existing DTV channel for use by a commercial licensee was not a counterproposal and fell outside of the scope of the NPRM in that proceeding.

### **DISCUSSION**

4. Shenandoah argues that the Commission should deviate from its established rule making procedures and technical standards to accommodate Shenandoah's desire to upgrade its secondary service to a full power station at Charlottesville. However, in the *Notice*, we explicitly stated that Commonwealth and Shenandoah's proposals were materially different. Commonwealth's proposes to modify station WHTJ(TV)'s initial DTV assignment by substituting a DTV channel that meets the technical standards based on replication of service set forth in Section 73.623(c). When proposals, like Commonwealth's, comply with the Commission's technical standards, the proposed channel is substituted for the assigned channel and the DTV Table of Allotments is amended to reflect the channel change. In contrast, Shenandoah's request is one for the allotment of a third DTV channel to the community of Charlottesville. Accordingly, Shenandoah must demonstrate compliance with the minimum geographic spacing and interference protection requirements as set forth in Section 73.623(d). By its own admission, Shenandoah can not meet those requirements. Thus, Shenandoah's request does not fall within the scope of this proceeding's *Notice*. Further, Shenandoah's request is not a counterproposal. There is no mutual exclusivity between the two proposals nor has Shenandoah provided reasonable justification for the Commission to deviate from its well established allotment procedures. Furthermore, we fully reviewed and discussed Shenandoah's proposal in our *Notice* in this proceeding and declined the requested relief. No new facts have been presented herein to compel a different result. Accordingly, we find that it is not in the public interest to delay consideration of Commonwealth's rule making by inviting parties to comment on the retention of channel \*14 at Charlottesville as a DTV allotment in order to permit Shenandoah, a secondary translator licensee, to apply for a full service DTV station.

### **TECHNICAL STATEMENT**

6. We believe the public interest would be served by substituting DTV channel \* 46 for DTV channel \*14 since it will enable station WHTJ(TV) to reduce its DTV conversion cost and eliminate possible interference to adjacent channel commercial land-mobile operations. DTV channel \*46 can be allotted to Charlottesville, Virginia, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (37-58-58 N. and 78-29-00 W.). In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Station WHTJ(TV) with the following specifications:

**Federal Communications Commission**

**DA 01-1763**

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<u>State &amp; City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop.(thous.)</u>
Charlottesville	*46	50.0	352	324

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 10, 2001, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Charlottesville, Virginia	32, *46

8. IT IS FURTHER ORDERED, That within 45 days of the effective date of this *Order*, Commonwealth Public Broadcasting Corporation shall submit to the Commission a minor change application for a construction permit (FCC Form 304) specifying DTV Channel \*46 in lieu of DTV Channel \*14 for station WHTJ(TV).

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Services Division  
Mass Media Bureau