

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

In the Matter of
Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Panama City, Florida)
MM Docket No. 99-318
RM-9745

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 8, 2001

Released: August 9, 2001

By the Chief, Video Services Division:

1. At the request of Waitt License Company of Florida, Inc. ("Waitt"), licensee of station WPGX(TV), NTSC channel 28, Panama City, Florida, the Commission has before it the Notice of Proposed Rule Making, 14 FCC Rcd 18555 (1999), proposing the substitution of DTV channel 9 for station WPGX(TV)'s assigned DTV channel 29c. Waitt filed comments stating its intention to apply for DTV channel 9, if allotted to Panama City. Emmis Television License Corporation of Mobile ("Emmis") and Associated Christian Television System, Inc. ("ACTS") filed comments. Waitt filed reply comments.

2. Emmis is the licensee of NTSC station WALA(TV), Mobile, Alabama, and is paired with DTV channel 9 for conversion to digital transmission. Emmis states that it has filed an amendment to a pending DTV application for station WALA(TV) and that the application as amended conflicts with the proposed operation of station WPGX-DT on channel 9. Emmis further states that station WPGX-DT would not cause impermissible interference to station WALA-DT if the station were to operate with its currently authorized ERP, however, interference would occur to Emmis' proposed operation at 124 kW and 346 meters HAAT. At this level of power, it is alleged, an additional 5% interference will be caused to station WALA-DT's service area, affecting over 50,600 persons. Emmis contends that this increase in interference is in excess of the 2% maximum threshold specified in Section 73.623(c) of the Commission's Rules. Emmis suggests that Waitt could fully maximize its facilities on

1 ACTS, the licensee of station WACX-LP, channel 9, Tallahassee, Florida, filed opposing comments and subsequently withdrew them.

2 After the pleading cycle closed the following unauthorized pleadings were received: Consolidated Reply Comments of Waitt License Company of Florida, Inc.; Motion to Accept Supplemental Comments, Supplemental Comments of Emmis Television License Corporation of Mobile; Reply to Supplemental Comments, Petition to Deny filed by Waitt; and Opposition filed by Emmis.

channel 29, operating as 1000 kW which would increase the station's DTV service area by 39%. It notes that the operation of WGPX-DT on currently-allotted channel 29 would permit both it and WALA-DT to maximize or, alternately Waitt could utilize channel 26.

3. In response, Waitt states that Emmis filed its modification to its DTV construction permit more than four months after Waitt's proposal was filed. Waitt also points out that Emmis admits that the WPGX-TV's channel change would not affect WALA's checklist application and that WPGX and WALA could have coexisted on DTV channel 9 without unacceptable interference to one another. Furthermore, Waitt notes that the Commission set December 23, 1999, as the deadline for interested parties to file comments in this proceeding and Emmis, on December 21, 1999, amended its application to increase WALA-DT's ERP to 124 kW. Waitt states that Emmis' claim that Waitt's channel change would cause impermissible interference to the subsequently amended WALA application is untimely and specious. Furthermore, Waitt asserts that according to the Public Notice, "*Application Processing for Digital Television (DTV)*", released August 10, 1998, the Commission set out the standards for determining 10% and 2% *de minimis* limits for DTV and that standard pertains to "authorized facilities," not to applications. Waitt asserts that Emmis' amendment does not justify denial of Waitt's proposal, and states that Emmis' late amendment, not the much earlier rule making proposal, must be rejected.

4. After the date for final comments in this proceeding, Waitt filed two supplements to its petition for rule making revising its proposal. The purpose of the filing was to eliminate any question of interference to the maximization proposal of station WALA-DT. Waitt's supplements propose to operate WPGX-DT from a new tower site utilizing a directional antenna, with a maximum ERP of 130 kW and an antenna height above average terrain of 264 meters. Although this new proposal will result in station WPGX-DT receiving interference from station WALA-DT in excess of 2%, Waitt states that it agrees to accept such interference since it will result in interference-free DTV service from station WPGX-DT to 292,256 persons. This is an increase of more than 80,000 above the Channel 29 replication population.

5. We have reviewed Waitt's amended proposal and agree that no interference would be caused to station WALA-DT. Further, we believe the public interest would be served by granting Waitt's petition, as amended, since it would permit the implementation of DTV service to Panama City, Florida, and would permit expanded DTV service to Mobile, Alabama. DTV channel 9 can be allotted to Panama City, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (30-13-45 N. and 85-23-20 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 WPGX-DT with the following specifications:

<u>State & City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
FL Panama City	9	130	264	312

6. 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 24, 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>
Panama City, Florida	9, 19, *38, 42

7. IT IS FURTHER ORDERED, That within 45 days of the effective date of this *Order*, Waitt License Company of Florida, Inc. shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 9 in lieu of DTV Channel 29c for station WPGX-TV.

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

9. 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