

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

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|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.622(b), |) | MM Docket No. 99-268 |
| Table of Allotments, |) | RM-9691 |
| Digital Television Broadcast Stations. |) | |
| (Chattanooga, Tennessee) |) | |

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 15, 2001

Released: February 16, 2001

By the Chief, Video Services Division:

1. At the request of Sarkes Tarzian, Inc. ("Sarkes"), licensee of station WRCB-TV, NTSC channel 3, Chattanooga, Tennessee, the Commission has before it the Notice of Proposed Rule Making ("*Notice*"), 14 FCC Rcd 13304 (1999), proposing the substitution of DTV channel 13 for station WRCB-TV's assigned DTV channel 55. Sarkes filed comments reaffirming its intention to apply for DTV channel 13, if allotted. Reply comments were filed by Media General Broadcasting, Inc., licensee of station WDEF(TV), NTSC channel 12, Chattanooga, Tennessee.¹

2. Media General filed reply comments stating that Sarkes' proposal to substitute DTV channels at Chattanooga should not be granted because WRCB-DT antenna pattern is in excess of Section 73.685(e) of the Commission's Rules. More importantly, Media General asserts that since Sarkes' channel substitution is adjacent to WDEF(TV)'s analog operations, it claims that adoption of Sarkes' proposed channel change would create predicted interference to 634 persons in WDEF(TV)'s viewing area. While Media General acknowledges that at this level of interference, the Sarkes' proposal still would comply with the Commission's *de minimis* standard under Section 73.623(C0(2)), it states it has concern about the potential for greater interference. It notes that there has been little field testing of VHF upper-adjacent channel interference, and the pertinent interference protection ratio is based upon picture degradation more appropriate for outlying areas-not the central population regions for which WDEF(TV) would be subject to adjacent channel interference.

3. In response, Sarkes believes that the Commission should strike Media General's reply comments because it did not file comments by the deadline fixed by the *Notice* adopted by the Commission in this proceeding. Sarkes states that Media General has filed its reply comments

¹ After the pleading cycle closed the following pleadings were received: Reply comments of Media General Broadcasting, Inc. ("Media General"), "Motion to Strike, or in the Alternative, Motion for Leave to File Accompanying Opposition to Reply", filed by Sarkes; "Motion to Leave to Submit Opposition" and "Opposition to Motion to Strike", filed by Media General; and "Reply to Opposition to Motion to Strike, or in the Alternative, Motion for Leave to File Accompanying Reply Comments", filed by Sarkes.

in a manner which precludes Sarkes' opportunity to respond to the objections raised therein and, should be struck as an abuse of Commission process. Furthermore, Sarkes asserts that the reply comments attempt to advance a counterproposal in this proceeding in direct violation of Section 1.410(d) of the Commission's rules. Sarkes also states that NTSC directional antenna rules do not apply to DTV operation and Media General's claim of interference is speculative.

DISCUSSION

4. We find that Media General reply comments are directed solely to issues raised in the *Notice* and thus we consider them untimely filed initial comments. Section 1.415(c) of the Commission's Rules regarding comment and replies to a notice of proposed rule making, clearly states that initial comments are designed to provide a reasonable time to respond to issues raised in the *Notice*. Reply comments are designed to provide a reasonable time for parties to respond to issues raised in original comments. In this case, Media General has filed comments that clearly dealt with the technical parameters of Sarkes' proposal which were delineated in the *Notice* and as a result should have filed its comments during the initial comment cycle. We believe acceptance of Media General's reply comments would disserve the public interest and would encourage the filing of additional untimely pleadings without any offsetting public benefits. Therefore, pursuant to Section 1.415 of the Commission's Rules we will dismiss Media General's reply comments as untimely.²

5. Since this case does not present any technical interference concerns, we believe the public interest would be served by substituting DTV channel 13 for DTV channel 55 because it will permit station WRCB-TV to operate on a core allotment in lieu of its current non-core assignment. DTV channel 13 can be allotted to Chattanooga, Tennessee, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (35-09-40 N. and 85-18-52 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 WRCB-TV 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> |
|-------------------------|--------------------|-----------------------|-------------------------|----------------------------------|
| TN Chattanooga | 13 | 37.0 | 325 | 915 |

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 April 2, 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:

² Even if we were to consider Media General's reply comments, our engineering analysis indicates that station WRCB-TV operating on DTV channel 13 with a power of 37.0 does not violate any of the Commission's rules. Furthermore, Media General's reliance on Section 73.685(e) is misplaced. Section 73.685(e) is applied only to NTSC directional proposals, while Section 73.625(c) is the correct rule section for DTV directional proposals which contains no constraint on maximum-to-minimum ratios for directional antennas used for DTV operations.

| <u>City</u> | <u>Channel No.</u> |
|------------------------|------------------------|
| Chattanooga, Tennessee | 13, *29, 35, 40, 47 |

7. IT IS FURTHER ORDERED, That within 45 days of the effective date of this *Order*, Sarkes Tarzian, Inc. shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 13 in lieu of DTV Channel 55 for station WRCB-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