

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.
(Albany, New York)
MB Docket No. 02-92
RM-10363

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 26, 2004

Released: March 10, 2004

By the Chief, Video Division:

1. At the request of Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of station WXXA-TV, NTSC channel 23, Albany, New York, the Commission has before it the Notice of Proposed Rule Making, 17 FCC Rcd 7964 (2002), proposing the substitution of DTV channel 7 for station WXXA-TV's assigned DTV channel 4. Comments were filed by Clear Channel, American Broadcasting Companies, Inc. ("ABC") licensee of station WABC-TV, channel 7, and permittee of DTV station WABC-DT, channel 45, New York, New York; and United Communications Corporation ("United"), licensee of station WWNY-TV, Carthage, New York. Reply comments were filed by Clear Channel, ABC and United.

2. ABC maintains that the operation of WXXA-DT on channel 7 will cause interference to numerous viewers of station WABC-TV. Specifically, ABC claims that if the proposed allotment is granted using the stated technical parameters noted in the Notice, nearly 45,000 people who currently rely on WABC will be unable to receive WABC's over-the-air signal. Thus, it submits that these persons would lose their only free ABC network news, public affairs, and entertainment programming. Additionally, United argues that Clear Channel's compliance with the two percent de minimis standard is a merely an initial hurdle. United argues that meeting the interference test does not amount to a per se determination that the proposal is consistent with the public interest. United claims that the operation of DTV channel 7 will interfere with service currently provided by WWNY-TV in rural areas of upstate New York. United maintains that a swathe including southern Lewis County, northern Oneida County, upper Herkimer County, part of Hamilton County and North County will lose WWNY-TV's coverage of local concerns. ABC and United argue that Clear

1 United filed a Petition for Leave to Submit Comments since its comments were received after the date established for filing comments. In its Petition, United states that its comments were late because, the Commission's Electronic Comment Filing System ("ECFS") refused to accept its comments. We note, however, that Section 1.49 (f) of the Commission's Rules specifically excludes electronic filing of comments in broadcast allotment proceedings. Also see Electronic Filing of Documents in Rulemaking Proceedings, 13 FCC Rcd 11322 (1998). However, we will consider United's comments in part in order to address United's concerns regarding interference.

Channel's justification to eliminate potential interference to videocassette recorders operating on channel 3 or 4 is an insufficient reason to justify a reallocation under the Commission's public interest mandate. Both assert that the claim of potential interference to VCRs cannot alone justify a DTV channel reallocation.² United maintains that the Commission has already made the determination that it would avoid the allotment of both channels 3 and 4 in the same market in order to eliminate any conflict with VCRs.³ ABC contends that the adoption of Clear Channel's proposal would set a precedent to grant the request of any station seeking to move from DTV channels 3 and 4. This could result, according to ABC, in valuable spectrum laying fallow at the end of the DTV transition period. Nevertheless, ABC suggests that if Clear Channel were limited to a maximum ERP no greater than 2 kilowatts, this would allow WXXA to replicate its NTSC contour while significantly reducing the level of interference to WABC.

3. In rebuttal, Clear Channel maintains that changing WXXA-DT's allotment from channel 4 to channel 7 will also decrease the station's susceptibility to impulse noise interference that has been experienced on digital stations operating on low-band VHF channels. Clear Channel argues that the Commission announced the standard for changes in DTV operations in its *MO&O* and that its proposal does not violate that standard. Under this new *de minimis* standard, Clear Channel notes, stations are permitted to increase power or make other changes in their operations as long as the requested change would not result in more than a 2 percent increase in interference to the population served by another station. Finally, Clear Channel states that moving to channel 7 will permit it to share an antenna and tower with high VHF DTV station, WNYT-DT, channel 12, Albany, New York, resulting in cost savings.

4. In reply, United claims that Clear Channel's interference showing represents an attempt to manipulate the Longley-Rice propagation methodology in order to obtain a result more to its liking by resorting to an 1 km cell analysis. This 1 km cell size analysis, according to United, reduces the predicted interference to less than 1% of the population served by WNY-TV. United argues that Clear Channel's 1 km cell size analysis represents a distortion of the OET Bulletin No. 69 methodology for determining interference by digital stations.

DISCUSSION

² Citing, *Sixth Report and Order* ("Sixth Report and Order"), 12 FCC Rcd 14588 (1997) at ¶ 151, Memorandum *Opinion and Order on Reconsideration of Sixth Report and Order* ("MO&O"), 13 FCC Rcd 7418 (1998) at ¶ 469-151.

³ United further submits that the Commission has rejected past claims of "VCR rationale", citing *MO&O*. United states that following the publication of the DTV Table of Allotment, CBS, Inc., licensee of WBBM-TV, Chicago, Illinois, protested the allotment of DTV channel 3 to WBBM-TV because it would be compromised by operation of an NTSC station on channel 4 at Milwaukee. In that case, CBS argued that in the area of signal overlap between the stations, viewers would experience interference with the operation of videocassette recorders. United notes that the Commission rejected CBS's argument, noting, "CBS's concerns about operational difficulties when both channels 3 and 4 are in use are unfounded. We find that the separation between these stations is sufficient to avoid any operational difficulties with set-top devices such as VCRs."

5. In the first instance, we reject Clear Channel's proposition that its channel change should be adopted in order to "eliminate potential interference to video cassette recorders that typically operate on channels 3 or 4" as initially proposed in the *Notice*. As pointed out by United, the Commission developed the DTV Table of Allotments to avoid any instances where channels 3 and 4 would both be used in the same area. This decision was made specifically to avoid conflict with cable terminal devices, VCRs and other TV interface devices that provide output signals on either channel 3 or 4.⁴ Since, only DTV channel 4 is allotted to Albany, New York, this problem cannot occur. However, for the reasons discussed below we conclude that Clear Channel's proposal should be adopted.

6. Section 73.623(c) specifies the protection requirements for DTV applications with respect to other DTV stations and allotments, and NTSC stations. In general, interference to such stations affecting less than 2 percent of the population they served is considered *de minimis*. The acceptable procedure for determining interference is outlined in OET Bulletin No. 69, which provides guidance on the use of the Longley-Rice propagation tool for ascertaining interference levels. Although Appendix B of the *MO&O* states that interference studies should be based on a 2 km cell size, the Commission allows the use of studies based on a finer resolution as long as the cell size is clearly identified by the applicant and it is requested that the Commission's review be based on the smaller cell size.⁵ Clear Channel did amend its petition to indicate the employment of a nominal grid size resolution of 1 km. The finer resolution analysis clearly demonstrates that the Clear Channel proposal complies with the *de minimis* standard.

7. Further, we must reject objectors' contentions that we should look beyond the *de minimis* or 2 percent rule where existing service loss is involved. In adopting the DTV Table of Allotments, the Commission found it necessary in some instances to allow increased interference to NTSC service in order to provide DTV stations the opportunity to replicate their existing NTSC service to the maximum extent possible. The Commission goal then, and now, is to provide for the transition to DTV service so that the benefits of this new technology can be brought to the American people in an expeditious and efficient manner. To handicap the provision of this new service by artificially limiting DTV changes or otherwise limiting the efficient provision of DTV service would thwart this goal. In adopting the 2 percent standard for DTV, the Commission balances the need to provide DTV licensees with maximum flexibility in constructing their DTV facilities with our desire to maintain existing NTSC service during the transition. To the extent that there may be some loss of NTSC service in this case, we note that such service loss is temporary and will likely be restored after completion of the DTV transition. In any case, we note here, using the finer resolution (1 km cell), the predicted interference to stations WABC-TV and WWNY-TV is less than the 2 percent *de minimis* standard. Finally, we are persuaded that Clear Channel's move to a higher band VHF channel and the co-locating of station WXXA-TV digital facilities with station WNYT-DT in Albany, New York, is a reasonable business judgment and is an efficient step to expedite Clear

⁴ See *Sixth Report and Order* at ¶ 148-151.

⁵ Public Notice 3060-0841, Additional Application Processing Guidelines for Digital Television (DTV), (August 10, 1998).

Channel's completion of construction of DTV station WXXA-DT.

8. DTV channel can be allotted to Albany, New York, as proposed, in compliance with the principle community coverage requirement of Section 73.625(a) at coordinates 42-37-31 N. and 74-00-38 W. Since the community of Albany is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. In addition, based on our independent study, 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 WXXA-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>
NY Albany	7	10	434	1442

9. 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 26, 2004, 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>
Albany, New York	7, 12, 26

10. IT IS FURTHER ORDERED, That within 45 days of the effective date of this *Order*, Clear Channel Broadcasting Licenses, Inc. shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 7 in lieu of DTV Channel 4 for station WXXA-DT.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau