

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

In the Matter of
Amendment of Section 73.622(i),
Final DTV Table of Allotments,
Television Broadcast Stations.
(Danville, Kentucky)
MM Docket No. 08-104
RM-11442

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 23, 2009

Released: January 29, 2009

By the Chief, Video Division, Media Bureau:

1. The Commission has before it a Notice of Proposed Rulemaking¹ issued in response to a petition for rulemaking filed by WDKY Licensee, LLC ("WDKY"), the licensee of WDKY-TV, analog channel 56, and WDKY-DT, digital channel 4, Danville, Kentucky. WDKY requested the substitution of channel 31 for digital channel 4 for post-transition use at Danville. WDKY filed comments in support of its petition for rulemaking. Jonathan Dobson, a viewer of WDKY-DT, filed a letter in this proceeding opposing the channel change,² to which WDKY filed reply comments.

2. Mr. Dobson asserts that WDKY-DT should remain on channel 4 because of "the VHF band's far more favorable propagation characteristics relative to UHF" According to Mr. Dobson, eastern Kentucky is underserved by digital television stations and "at my home in Manchester, [Kentucky], WDKY booms in; the other Lexington, [Kentucky] digital broadcasts, all on UHF, don't register." Mr. Dobson did not, however, submit a technical showing that WDKY-DT would be able to provide better coverage on channel 4 than channel 31.

3. In reply, WDKY states that its experience operating WDKY-DT for the past several years has led it to conclude that operating the station on UHF channel 31 rather than low VHF channel 4 will provide better service to the public. Between late March and mid-November 2008, approximately 100 viewers of WDKY-TV's analog signal contacted the station to report that, while they could receive the digital signals of the other television stations in the Lexington market, all of which are broadcasting on UHF channels, they were unable to receive the WDKY-DT signal on digital channel 4.³ According to WDKY, "[i]n stark contrast to this hard evidence of the inability of numerous viewers in the [Lexington market] to currently receive WDKY-DT over-the-air," Mr. Dobson's objection is based solely on his speculative belief that he would be unable to receive a signal on channel 31. WDKY also submits contour coverage maps showing that, while Mr. Dobson's community of Manchester is outside the Grade B contour of WDKY-TV

¹ Danville, Kentucky, DA 08-1499 (released October 1, 2008).

² WDKY initially requested the substitution of channel 46 for channel 4, but on July 31, 2008, requested substitution of channel 31 instead. The Commission received Mr. Dobson's letter, dated July 28, 2008, on August 4, 2008, prior to the release of the Notice of Proposed Rulemaking and its publication in the Federal Register, which established the dates for the filing of comments and reply comments

³ Reply Comments at Exhibits 2 and 3.

and therefore, is not predicted to presently receive a viewable over-the-air analog signal, it is located within the predicted 41 dBu contour of the proposed WDKY-DT operations on channel 31.⁴ Accordingly, Mr. Dobson will continue to receive a signal from WDKY-DT on the requested channel 31.

4. In this case, we agree that the public interest would be served by substituting DTV channel 31 for channel 4 at Danville, Kentucky, because it will allow WDKY-DT to better replicate the current analog service of WDKY-TV and thereby allow the station to maintain program service to the station’s current viewers. The Commission has recognized that in some cases, low VHF signals may not offer the best possible digital signal to viewers,⁵ and WDKY has documented that this has been its experience in operating on digital channel 4 at Danville. We also note that the predicted 41 dBu contour of the proposed operation on digital channel 31 not only encompasses the entire Grade B contour of WDKY-TV, but will also extend digital service to a number of persons, including Mr. Dobson, who do not presently receive a predicted signal from WDKY-TV.

5. DTV channel 31 can be substituted for DTV channel 4 at Danville, Kentucky, as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) of the Commission’s rules, at coordinates 37-52-51 N. and 84-19-16 W. In addition, the channel change meets the technical requirements set forth in Sections 73.616, 73.622(f)(5), and 73.623 of the Commission’s rules with the following specifications:

City and State	DTV Channel	DTV Power (kw)	Antenna HAAT (meters)	DTV Service Pop. (thous.)
Danville, Kentucky	31	1000	351.9	1127

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 30 days after the date of publication of this Report and Order in the Federal Register, the DTV Table of Allotments, Section 73.622(i) of the Commission’s rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>
Danville, Kentucky	31

7. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, WDKY Licensee, LLC shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV channel 31 in lieu of DTV channel 4.

8. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

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

⁴ Reply Comments at Exhibit 1.

⁵ *See, e.g.,* Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, 19 FCC Rcd 18279, n.129 (2004).

10. For further information concerning the proceeding listed above, contact Shaun A. Maher, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
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