

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

In the Matter of)	
)	
Amendment of Section 73.622(i),)	MB Docket No. 09-170
Post-Transition Table of DTV Allotments,)	RM-11567
Television Broadcast Stations.)	
(Fort Myers, Florida))	
)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: November 19, 2009

Released: November 20, 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 Fort Myers Broadcasting Company (“FMBC”), the licensee of WINK-TV, channel 9, Fort Myers, Florida. FMBC requests the substitution of channel 50 for channel 9 at Fort Myers. FMBC filed comments reaffirming its interest in the proposed channel substitution. No other comments were received.

2. We believe the public interest would be served by substituting channel 50 for channel 9 at Fort Myers. As FMBC states, “[f]ollowing the switch to digital operations, a significant number of WINK-TV’s viewers complained of an inability to receive the [s]tation’s digital signal.”² By contrast, FMBC explains, “[m]ost of the persons complaining of reception problems were able to receive the UHF signals of WINK-TV’s competitors.”³ FMBC attributes its service difficulties to “[s]ome unknown factor or combination of factors, possibly, the concrete block construction mandated by the South Florida building codes,” which impedes indoor reception of VHF digital television signals.⁴ WINK-TV’s difficulty serving indoor television sets, as FMBC states, is of particular concern because indoor battery-powered DTV receivers are unlikely to receive the station’s broadcast of up-to-date emergency information during the areas frequent hurricanes.⁵ The station predicts that substituting UHF channel 50 for channel 9 at Fort Myers, accompanied by an increase in power, will “substantially resolve the reception issues its viewers

¹ *Fort Myers, Florida*, DA 09-2198 (released October 9, 2009).

² *FMBC Petition for Rulemaking* at 2.

³ *Id.* at 1-2.

⁴ *Id.* at 2.

⁵ *Id.*

currently are experiencing.”⁶

3. Channel 50 can be substituted for channel 9 at Fort Myers, Florida, as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) of the Commission’s rules,⁷ at coordinates 26-48-01 N. and 81-45-48 W. In addition, we find that this channel change meets the technical requirements set forth in Sections 73.616 and 73.623 of the Commission’s rules⁸ with the following specifications:

City and State	Channel	Power (kW)	Antenna (meters)	Service Pop. (thous.)
Fort Myers, Florida	50	1000	444	1495

4. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to Section 553(d)(3) of the Administrative Procedures Act.⁹ An expedited effective date is necessary in this case to ensure that station WINK-TV can restore service to former viewers as quickly as possible.

5. 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 immediately upon publication of this Report and Order in the Federal Register, the Post-Transition of 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>
Fort Myers, Florida	15, *31, 50

6. IT IS FURTHER ORDERED, That within 30 days of the effective date of this Order, Fort Myers Broadcasting Company shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying channel 50 in lieu of channel 9 at Fort Myers, Florida.

7. 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).

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

⁶ *Id.*

⁷ 47 C.F.R. § 73.625(a).

⁸ 47 C.F.R. §§ 73.616 and 73.623.

⁹ 5 U.S.C. § 553(d)(3).

9. For further information concerning the proceeding listed above, contact Adrienne Y. Denysyk, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
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Media Bureau