

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

In the Matter of
Amendment of Section 73.622(i),
Post-Transition Table of DTV Allotments,
Television Broadcast Stations.
(ATlantic City, New Jersey)
MB Docket No. 09-231
RM-11587

NOTICE OF PROPOSED RULE MAKING

Adopted: December 17, 2009

Released: December 18, 2009

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Chief, Video Division, Media Bureau:

1. The Commission proposes the allotment of channel 4 to Atlantic City, New Jersey, pursuant to Section 331(a) of the Communications Act of 1934, as amended. Section 331(a) of the Act provides, in pertinent part, that:

It shall be the policy of the Federal Communications Commission to allocate channels for very high frequency commercial television broadcasting in a manner which ensures that not less than one such channel shall be allocated to each State, if technically feasible.

2. While the Commission reallocated analog channel 9 from New York, New York to Secaucus, New Jersey in 1983, pursuant to Section 331(a), the station operating on that channel, WWOR(TV), ceased transmitting an analog signal on June 12, 2009, as required by law, and was allotted UHF channel 38 for its post-transition digital operations. Accordingly, the State of New Jersey currently does not have a very high frequency ("VHF") commercial television channel allotment. In order to fulfill the mandate that the Commission allot at least one VHF channel to each state, if technically feasible, the Commission is waiving

1 47 U.S.C. § 331(a).

2 Petition to Reallocate VHF Television Channel 9 from New York, New York, to a City Within the City Grade Contour of Station WOR-TV, 53 RR 2d 469 (1983); aff'd, Multi-State Communications, Inc. v. FCC, 728 F.2d 1519 (D.C. Cir. 1984), cert denied, 469 U.S. 1017 (1984).

3 See DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009); In the Matter of Implementation of the DTV Delay Act, 24 FCC Rcd. 1607 (2009).

4 47 C.F.R. §§ 73.622(b) and (i).

5 While channel 13 is allotted to Newark, New Jersey, that channel has been operated as part of the New York State educational network since 1961, and the Court of Appeals has ruled that the allotment does not qualify as a VHF channel allotment for the purpose of Section 331(a). Multi-State Communications, Inc., 728 F.2d at 1522.

the freeze on the filing of new DTV allotments⁶ to initiate this proceeding and to advance the allocation policies of Section 331(a) of the Act.

3. Atlantic City is an incorporated community with a 2000 U.S. Census population of 40,517 people.⁷ Additionally, Atlantic City currently has two UHF commercial television allotments, and therefore the Commission has already determined that it is a community for allotment purposes.

4. We believe that this proposal warrants consideration because the adoption of the proposed allotment would provide the State of New Jersey with a VHF channel, as directed by Section 331(a) of the Act. Channel 4 can be allotted to Atlantic City, as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) of the Commission's rules,⁸ at coordinates 39-43-41 N. and 74-50-39 W.

5. Accordingly, we seek comments on the proposed amendment of the Post Transition Table of DTV Allotments, Section 73.622(i) of the Commission's Rules,⁹ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Atlantic City, New Jersey	44, 49	4, 44, 49

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before [30 days after publication in the Federal Register] and reply comments on or before [45 days after publication in the Federal Register], and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554.

7. Parties must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m.¹⁰ All hand deliveries must be held together with rubber bands or fasteners.

⁶ Public Notice, "Freeze on the Filings of Certain TV and DTV Requests for Allotment or Service Area Changes," 19 FCC Rcd 14810 (MB 2004).

⁷ U.S. Census Bureau, *State & County Quick Facts, Atlantic City, New Jersey*, <http://quickfacts.census.gov/qfd/states/34/3402080.html> (access date Dec. 9, 2009).

⁸ 47 C.F.R. § 73.625(a).

⁹ 47 C.F.R. § 73.622(i).

¹⁰ Effective December 28, 2009, the Commission's contractor will begin receiving hand-delivered and/or messenger-delivered paper filings for the Commission's Secretary at the FCC headquarters building located at 445 12th Street, S.W., Room TW-A325, Washington, D.C. between the hours of 8:00 a.m. and 7:00 p.m. This will be the only location where hand-delivered or messenger-delivered paper filings for the Secretary will be accepted. FCC Announces Change in Filing Location for Paper Documents, Public Notice, DA 09-2529 (released Dec. 3, 2009).

Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, Maryland 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary.¹¹ Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the DTV Table of Allotments, Section 73.622(i). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, § 3506(c)(4).

9. For further information concerning the proceeding listed above, contact Adrienne Y. Denysyk, Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹¹ See 47 C.F.R. § 1.7.

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and 47 C.F.R. Sections 0.61, 0.204(b), 0.283, and 1.411, IT IS PROPOSED TO AMEND the Post-Transition Table of DTV Allotments, 47 C.F.R. Section 73.622(i), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

3. Cut-off protection. The following procedures will govern the consideration of the filings in this proceeding;

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) Because the Commission has not yet lifted its general freeze on the filing of petitions for rulemaking to establish new DTV channel allotments,¹² we will not consider counterproposals which propose a new allotment to a community in a State which already has a VHF commercial television channel allotment.

(b) With respect to petitions for rule making requesting channel substitutions¹³ that conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c)). Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. An electronic copy should also be sent to adrienne.denysyk@fcc.gov.

6. Public Inspection of Filings. All filings made in this proceeding will be available for

¹² See Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," 19 FCC Rcd 14810 (MB 2004).

¹³ Public Notice, "Commission Lifts the Freeze on the Filing of Maximization Applications and Petitions for Digital Channel Substitutions, Effective Immediately," 23 FCC Rcd 8330 (MB 2008).

examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C. 20554.