

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.
(North Pole and Plattsburgh, New York)
MM Docket No. 99-238
RM-9669

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 4, 2011

Released: January 5, 2011

By the Chief, Video Division, Media Bureau:

1. At the request of Hearst-Argyle Stations, Inc. ("Hearst-Argyle"), licensee of station WPTZ(DT), channel 14, North Pole, New York, the Commission has before it a Notice of Proposed Rule Making, proposing to reallocate channel 14 from North Pole to Plattsburgh, New York, and to modify station WPTZ(DT)'s authorization to specify Plattsburgh as its community of license. Hearst-Argyle filed comments. On March 5, 2010, Hearst-Argyle filed a supplement, requesting that the Commission amend the Post-Transition Table of DTV Allotments to reallocate channel 14 from North Pole to Plattsburgh, to modify station WPTZ(DT)'s community of license from North Pole to Plattsburgh, and to further update the record. For the reasons discussed below, we will grant Hearst-Argyle's requested reallocation of channel 14 to Plattsburgh in the Post-Transition Table of DTV Allotments, and further grant its request to change WPTZ(DT)'s community of license.

2. Background. This reallocation proposal was filed pursuant to Section 1.420(i) of the

1 North Pole and Plattsburgh, New York, Notice of Proposed Rulemaking, 14 FCC Rcd 10447 (MMB 1999) ("NPRM").

2 At the time it filed its rule making petition, Hearst-Argyle was also operating WPTZ(TV) on analog channel 5 and requested that the Commission amend the analog Table of Allotments, 47 C.F.R. § 73.606(b), as well as the pre-transition DTV Table of Allotments, 47 C.F.R. § 73.622(b). Pursuant to the DTV Delay Act, Pub.L.No. 111-4, 123 Stat. 112 (2009), full-power television stations were required to cease providing an analog television service by June 13, 2009, and the Commission was directed to terminate all full-power television analog licenses. Thus, the proposed amendment with respect to analog channel 5 is moot. Likewise, for this same reason, the request to amend the pre-transition digital table of allotments is moot.

3 Mt. Mansfield Television, Inc., the licensee of station WCAX-TV, Burlington, Vermont, filed Comments and Reply Comments opposing the proposed change in community of license, but withdrew its opposition by letter dated December 14, 2010. As discussed below, we have concluded that the proposed rule amendment is consistent with our allotment policies and would serve the public interest.

4 47 C.F.R. § 73.622(i).

Commission's Rules,<sup>5</sup> which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>6</sup> In considering a reallocation proposal, the Commission compares the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments.<sup>7</sup> In addition, Section 307(b) of the Communications Act of 1934, as amended (the "Act"),<sup>8</sup> requires that station assignments be made to "communities."<sup>9</sup> A specified place that is incorporated or listed in the U.S. Census qualifies as a "community."<sup>10</sup> A petitioner seeking an assignment to a place that is neither incorporated or listed in U.S. Census reports is required to provide demographic data with its rulemaking petition demonstrating that the place specified for allotment is a "geographically identifiable population grouping" that may be considered a "community" for allotment purposes.<sup>11</sup>

3. In its rulemaking petition, Hearst-Argyle states that North Pole has always been a small village which, over time, has shrunk, and that there are currently only four houses near North Pole's main intersection. According to Hearst-Argyle, North Pole's sole attractions are "Santa's Workshop," and its post office, which is only open for a few weeks around Christmas to handle letters to "Santa." The *NPRM* issued in this proceeding also observes that North Pole was not listed in the 1990 U.S. Census and appears to lack any of the indicia upon which the Commission routinely relies to determine community status, such as local schools, a library, community organizations or local businesses, with the exception of "Santa's Workshop." Thus, the *NPRM* questions whether North Pole continues to qualify as a community for allotment purposes.<sup>12</sup> The *NPRM* found that Plattsburgh, on the other hand, clearly qualifies as a community for allotment purposes since it has a 1990 U.S. Census population of 17,231 persons, its own local government,

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<sup>5</sup> 47 C.F.R. § 1.420(i).

<sup>6</sup> *See Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

<sup>7</sup> This determination is based upon the television allotment priorities set forth in *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952). The television allotment priorities are to: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities.

<sup>8</sup> 47 U.S.C. § 307(b).

<sup>9</sup> *In the Matter of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 101 (1982) ("*Assignment Policies and Procedures*"). *See also Mighty-Mac Broadcasting Co.*, 101 FCC 2d 303 (Rev. Bd. 1985).

<sup>10</sup> *Assignment Policies and Procedures*, 90 FCC 2d at 101.

<sup>11</sup> *Id.*

<sup>12</sup> *NPRM*, 14 FCC Rcd at 1048.

police and fire departments and educational institutions, as well as numerous religious institutions and businesses.<sup>13</sup> Finally, the *NPRM* recognizes that the proposed channel reallocation will result in the removal of North Pole's sole local television broadcast service in order to provide Plattsburgh with its second local and first commercial television service.<sup>14</sup> The *NPRM*, however, tentatively concludes that North Pole may no longer qualify as a community for allotment purposes, and that because there is no proposed change in the station's transmitter site, there will be no loss of reception service by anyone presently receiving WPTZ(DT)'s signal.<sup>15</sup>

4. In its comments, Hearst-Argyle reiterates that North Pole no longer has sufficient attributes or indicia to qualify as a "community" for allotment purposes. Hearst-Argyle also asserts that Plattsburgh is clearly a community for allotment purposes, with a Census 2000 population of 11,190, its own local government, police department, fire department, post office, public and private secondary schools, local newspaper, religious institutions, and a Chamber of Commerce. In addition, the WPTZ(DT) main studio has been located in Plattsburgh since 1954, and Hearst-Argyle argues that "it makes more sense to have WPTZ's community of license square with its main studio location."

5. Discussion. Channel 14 is the only channel allotted to North Pole. We recognize that the Commission has stated its reluctance to remove a community's sole local broadcast service.<sup>16</sup> After reviewing the record in this proceeding, however, we conclude that North Pole no longer remains a community for allotment purposes. Thus, the change in community of license will not deprive a community of its sole existing broadcast station because North Pole is no longer a community within the meaning of Section 307(b) of the Act.

6. As noted above, North Pole is not listed in the 1990 or 2000 U.S. Census, nor is it incorporated.<sup>17</sup> In determining whether an unincorporated location or location that is not listed in U.S. Census reports qualifies as a community for allotment purposes, the Commission typically considers "whether the location has sufficient attributes or indicia of 'community,' such as political, commercial, social and religious organizations and services serving the community . . ." <sup>18</sup> While it is not necessary for a location to have political boundaries or a local government,

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<sup>13</sup> *Id.* at 10449.

<sup>14</sup> Noncommercial educational television station WCFE-TV, channel 38, is allotted and licensed to Plattsburgh.

<sup>15</sup> *NPRM*, 14 FCC Rcd at 10448.

<sup>16</sup> See *Bessemer and Tuscaloosa, Alabama*, Report and Order, 5 FCC Rcd 669 (1990), *app. for rev. granted*, 11 FCC Rcd 11585 (1996).

<sup>17</sup> The coordinates for the North Pole allotment specify a location in Essex County, New York. The Essex County website does not recognize North Pole as either a town or a village. See <http://www.co.essex.ny.us/towns.aspx> and <http://www.co.essex.ny.us/downloads/TownVillageClerks.pdf> (accessed December 28, 2010). We also note that the Rand McNally Commercial Atlas, while not an official source for population listings, attributes North Pole with a population of only 70 people in 1998 and 2009.

<sup>18</sup> *Mighty-Mac Broadcasting Co.*, 101 FCC 2d at 305.

the Commission has recognized that “there comes a point when a place has such a lack of attributes that it is no longer qualified as a community.”<sup>19</sup> Here, North Pole does not have a local school, police or fire department, library, community organization, newspaper, or business. While “Santa’s Workshop,” which Hearst-Argyle characterizes as “a holiday novelty village,”<sup>20</sup> advertises its location as North Pole, that tourist attraction is actually located in the town of Wilmington, New York.<sup>21</sup> In addition, the North Pole post office is a community post office within “Santa’s Workshop” in Wilmington that offers a “North Pole, NY” postal cancellation to visitors of “Santa’s Workshop” or persons who package their pre-stamped mail and send it to the “North Pole Postmaster” at a P.O. Box in North Pole.<sup>22</sup> In view of the record before us, we are unable to conclude that North Pole has any of the indicia which the Commission routinely uses to determine community status. We also conclude that Plattsburgh, with an identifiable population grouping, local government, schools, businesses, and other indicia of community status clearly qualifies as a community for allotment purposes. Finally, we note that because Hearst-Argyle does not propose a move of the station’s transmitter, there will be no loss of reception service to any of the existing WPTZ(DT) service area.

7. Accordingly, IT IS ORDERED, That the Petition for Rule Making filed by Hearst-Argyle Stations, Inc., licensee of station WPTZ(DT), Channel 14, North Pole, New York, IS GRANTED.

8. IT IS FURTHER ORDERED, That the Post-Transition Table of DTV Allotments, Section 73.622(i) of the Commission’s Rules, IS AMENDED for the communities listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Amended</u>
North Pole, New York	14	--

<sup>19</sup> *Noalmark Broadcasting Corp.*, Report and Order, 50 R.R. 2d (P&F) 755, 756 (1981)(Commission granted change in community of license from Humble City, New Mexico to Hobbs, New Mexico, concluding that Humble City, a former oil company camp with no residents, business establishments or local government, was no longer a community for Section 307(b) purposes).

<sup>20</sup> March 5, 2010 Supplement to Petition for Rulemaking at p. 3. We note that Mt. Mansfield Television, Inc., which initially objected to the change in community of license, did not dispute this characterization of North Pole, but instead argued that the channel was allotted to the Tri-Lakes area, which includes the communities of Lake Tupper, Lake Placid and Saranac Lake, New York. Comments of Mt. Mansfield Television, Inc. at pp. 7-9.

<sup>21</sup> See web site for Santa’s Workshop, <http://www.northpoleny.com/Directions.html>, giving its location as 324 Whiteface Memorial Highway, Wilmington, New York.

<sup>22</sup> *NPRM*, 14 FCC RCd at 10449; see also <http://www.northpoleny.com/Postoffice.html>.

Plattsburgh, New York

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9. IT IS FURTHER ORDERED, That the authorization for station WPTZ(DT) IS MODIFIED to reflect that the station's community of license is Plattsburgh, New York

10. IT IS FURTHER ORDERED, That the Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>23</sup>

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

12. For further information concerning this proceeding, contact Joyce L. Bernstein, Media Bureau, at (202) 418-1600 or [joyce.bernstein@fcc.gov](mailto:joyce.bernstein@fcc.gov).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
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<sup>23</sup> See 47 U.S.C. § 801(a)(1)(A).