

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

REPORT AND ORDER

Adopted: March 16, 2010

Released: March 17, 2010

By the Chief, Video Division, Media Bureau:

1. The Commission has before it a Notice of Proposed Rulemaking proposing the allotment of channel 4 to Atlantic City, New Jersey, as New Jersey’s first post-transition digital very high frequency (“VHF”) commercial television channel, pursuant to Section 331(a) of the Communications Act of 1934 (“Act”), as amended. Three parties, Nave Broadcasting, LLC (“Nave”); Revolution Transport Services (“Revolution”); and PMCM TV, LLC (“PMCM”), submitted comments in response to the Notice. We received no reply comments. For the reasons discussed below, we are amending the Post-Transition Table of DTV Allotments, Section 73.622(i) of the Commission’s Rules, by allotting channel 4 to Atlantic City, New Jersey.

2. Background. Section 331(a) of the Act provides:

Very High Frequency Stations. - 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. In any case in which [a] licensee of a very high frequency commercial television station notifies the Commission to the effect that such licensee will agree to the reallocation of its channel to a community within a State in which there is allocated no very high frequency commercial television broadcast channel at the time [of] such notification, the Commission shall, notwithstanding any other provision of law, order such reallocation and issue a license to such licensee for that purpose pursuant to such notification for a term of not to exceed 5 years as provided in section 307(d) of this the Communications Act of 1934.

1 Atlantic City, New Jersey, DA 09-2606 (rel. Dec. 18, 2009) (“Notice”).

2 47 U.S.C. § 331(a).

3 47 C.F.R. § 73.622(i).

3. The State of New Jersey currently does not have a VHF commercial television channel allotment.⁴ While the Commission reallocated analog channel 9 from New York, New York to Secaucus, New Jersey in 1983, pursuant to Section 331(a),⁵ the station operating on that channel, WWOR(TV), ceased transmitting an analog signal on June 12, 2009, as required by law,⁶ and was allotted UHF channel 38 for its post-transition digital operations.⁷ In order to fulfill the mandate that the Commission allot at least one VHF channel to each state, if technically feasible, the Commission, in the *Notice*, waived the freeze on the allotment of new DTV channels⁸ to initiate this proceeding and to advance the allocation policies of Section 331(a) of the Act.

4. Atlantic City is an incorporated community with a 2000 U.S. Census population of 40,517 people.⁹ 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.

5. **Comments.** The three commenting parties all state that they support the proposal to allocate channel 4 to Atlantic City, New Jersey. Revolution, a New Jersey business, explains that “Dozens of communities in and around Atlantic City are grossly underserved by the current television stations,” and “Allocating [c]hannel 4 to Atlantic City is an opportunity to increase [l]ocalism in Southern New Jersey.”¹⁰ Nave not only supports the proposal by commenting that the proposal will serve the public interest, but also states that it “intends to apply to participate in the auction for the channel and, if it is the successful bidder, to promptly construct the station after grant.”¹¹

6. PMCM states that it “strongly wants to go on record as supportive” of an additional television

⁴ 47 C.F.R. § 73.622(i). 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 purposes of Section 331(a). *Multi-State Communications, Inc. v. FCC*, 728 F.2d 1519, 1522 (D.C. Cir. 1984).

⁵ *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).

⁶ 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).

⁷ 47 C.F.R. §§ 73.622(b) and (i).

⁸ Public Notice, “Freeze on the Filings of Certain TV and DTV Requests for Allotment or Service Area Changes,” 19 FCC Rcd 14810 (MB 2004).

⁹ *Notice* at ¶ 2 (citing 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)).

¹⁰ Revolution Comments at 1.

¹¹ Nave Comments at 1.

allocation to the State of New Jersey.¹² PMCM explains that its “principals have for decades been strong proponents of the expansion of New Jersey-based television . . . but were foreclosed by the Commission’s licensing process” from acquiring a New Jersey television station.¹³ As such, PMCM asserts that the Commission must ensure that the channel 4 allocation at Atlantic City does not cause impermissible interference to its June 15, 2009 notification, made pursuant to the second sentence of Section 331(a), that it agrees to the reallocation of its full power television station, KNVN(TV), channel 3, Ely, Nevada to Middletown Township, New Jersey.¹⁴

7. **Discussion.** We believe the public interest will be served by adopting the proposed allotment, as it would provide the State of New Jersey with a VHF channel. Until June 12, 2009, the date on which all full power television stations were required to cease analog transmission, the Section 331(a) allotment policies were met with respect to the State of New Jersey due to WWOR(TV)’s operation on analog channel 13 at Secaucus. Now that the full power digital transition has been completed and WWOR(TV) is no longer allotted a VHF channel, the Commission is allotting the State of New Jersey a VHF channel as directed by the first sentence of 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,¹⁵ at coordinates 39-43-41 N. and 74-50-39 W.

8. **Ordering Clauses.** 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>	
	<u>Present</u>	<u>Proposed</u>
Atlantic City, New Jersey	44, 49	4, 44, 49

¹² PMCM Comments at 2.

¹³ *Id.* at 1-2.

¹⁴ *Id.* at 2-3. By letter dated December 18, 2009, the Media Bureau denied PMCM’s request that the Commission reallocate channel 3 from Nevada to New Jersey and issue PMCM a corresponding license. *PMCM TV, LLC, c/o Harry F. Cole, Esq.*, DA 09-2601 (rel. Dec. 18, 2009). PMCM subsequently filed a Petition for Issuance of Writ of Mandamus with the United States Court of Appeals for the District of Columbia Circuit and, on January 19, 2010, a Contingent/Protective Application for Review and Request for Prompt Related Relief with the Commission. *In re PMCM TV, LLC*, D.C. Cir. Case No. 10-1001 (Jan. 5, 2010); Mot. for Leave to File Supp. to Pet. for Issuance of Writ of Mandamus and Supp., *In re PMCM TV, LLC*, D.C. Cir. Case No. 10-1001 (Jan. 22, 2010). Because our proposal to allot channel 4 to Atlantic City is not mutually-exclusive with an allotment of channel 3 to Middletown Township, the outcome of PMCM’s appeal of the Media Bureau’s December 18, 2009 decision is not pertinent to the instant proceeding.

¹⁵ 47 C.F.R. § 73.625(a).

9. 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).

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

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau