

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

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In the Matter of	)	
	)	
Amendment of Section 73.622(i),	)	MB Docket No. 11-139
Post-Transition Table of DTV Allotments,	)	RM-11636
Television Broadcast Stations	)	
(Hampton-Norfolk, Virginia; Norfolk, Virginia-	)	
Elizabeth City, North Carolina	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: August 15, 2011**

**Released: August 17, 2011**

**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 has before it a petition for rule making filed by Hampton Roads Educational Telecommunications Association (HRETA), licensee of noncommercial educational television station WHRO-TV, channel \*16, Hampton-Norfolk, Virginia. HRETA requests the reallocation of its channel \*16 to Norfolk, Virginia-Elizabeth City, North Carolina, as Elizabeth City's first local TV service. HRETA also requests modification of station WHRO-TV's license to specify Norfolk, Virginia-Elizabeth City, North Carolina as its community of license.

2. HRETA seeks a waiver of the Commission's freeze on the filing of petitions for rulemaking by television stations to change their community of license.<sup>1</sup> In support of its waiver request, HRETA asserts that its proposed change in community of license better serves the Commission's allotment priorities and policies. According to HRETA, since its proposal contemplates no changes in the technical specifications of WHRO-TV, such as a change in channel or transmitter site, and the digital transition is now complete, a grant of its waiver request will not subvert the original purpose of the freeze.

3. We believe the public interest would be served by waiving the freeze on filing petitions for changes in community of license in order to consider HRETA's proposal. The Media Bureau initially imposed a freeze in 2004 on the filing of all rulemaking petitions for allotment changes because the Commission was in the process of developing a channel election and repacking process to assign all eligible broadcasters a post-transition DTV channel, and concluded that ensuring a stable television database was necessary during the channel election process and the initial processing of applications for post-transition facilities.<sup>2</sup> While the Media Bureau lifted the freeze on the filing of petitions for digital

<sup>1</sup> See "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," Public Notice, 19 FCC Rcd 14810 (MB 2004).

<sup>2</sup> *Id.* at 14810; see also "Commission Lifts the Freeze on the Filing of Maximization Applications and Petitions for Digital Channel Substitutions, Effective Immediately," Public Notice, 23 FCC Rcd 8330 (MB 2008).

channel substitutions (but not for changes in community of license) in 2008, it recently reimposed the freeze on channel substitutions.<sup>3</sup> This freeze is necessary to permit the Commission to evaluate the recommendations made in the National Broadband Plan that it initiate a rulemaking proceeding to reallocate 120 MHz of spectrum from the broadcast television bands for broadband use and consider methodologies for repacking full-power television channels to increase the efficiency of channel use.<sup>4</sup> If changing WHRO-TV's community of license would require additional technical changes, such as moving the station's transmitter site or changing channel, we would not grant HRETA's waiver request. However, since no additional technical changes are necessary,<sup>5</sup> and HRETA does not propose to make any technical changes, we believe that considering its proposal will not undermine the new purpose of the freeze on the filing of petitions for allotment changes.

4. HRETA seeks to invoke the provisions set forth in Section 1.420(i) of the Commission's Rules, which permit 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. This procedure is limited to situations in which: (1) the new allotment would be mutually exclusive with the existing allotment; (2) the reallocation will result in a preferential arrangement of allotments applying the Commission's television allotment priorities;<sup>6</sup> and (3) the change would not deprive a community of its sole existing broadcast station.<sup>7</sup>

5. In support of its request, HRETA argues that it has not proposed to relocate the transmitter site for WHRO-TV, nor is it proposing to operate on different channels. Thus, its proposed modification is mutually exclusive with its existing authorization at Hampton-Norfolk. HRETA notes that the predicted community contours of the station will remain the same and there will be no change in the area or population served by the station with its over-the-air signal. HRETA includes an engineering statement that it claims demonstrates that WHRO-TV will provide the required city grade signal to Elizabeth City, North Carolina. HRETA further states that the station's programming will not change except to the extent needed to serve the needs of Elizabeth City. Finally, HRETA states that it will not abandon its long-standing obligation to meet the needs of Hampton, Virginia. HRETA states that Hampton is part of the Norfolk Metropolitan Area, WHRO-TV will continue to be licensed to Norfolk, and HRETA represents that it shall continue to consult with community leaders in Hampton and to ascertain the needs of that community and develop programming to meet those needs as it claims to have done for many years.

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<sup>3</sup> "Freeze on the Filing of Petitions for Digital Channel Substitutions, Effective Immediately," Public Notice, DA 11-959 (rel. May 31, 2011).

<sup>4</sup> *Id.*

<sup>5</sup> WHRO-TV already meets the principal community coverage requirements of Section 73.625(a) of the Commission's rules with respect to Elizabeth City.

<sup>6</sup> The television allotment priorities are as follows: (1) to provide at least one television service to all parts of the United States; (2) to provide each community with at least one television broadcast station; (3) to provide a choice of at least two television services to all parts of the United States; (4) to provide each community with at least two television stations; and, (5) assign any remaining channels to communities based on population, geographic location, and the number of reception television services available to the community. *See Sixth Report and Order on Television Allocations*, 41 F.C.C. 148 (1952).

<sup>7</sup> *See Modification of FM and TV Authorization to Specify a New Community of License* ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990), ("Change of Community MO&O").

6. Elizabeth City, North Carolina presently has no local television station. HRETA maintains that Elizabeth City is a major city deserving of a local television broadcast station. HRETA cites to Census 2000 data that indicates that Elizabeth City has a population of 17,188 and is the center of the Elizabeth City Micropolitan Statistical Area, which has a population of 57,267 according to a 2004 Census estimate. HRETA further states that Elizabeth City is home to two colleges, a branch of the University of North Carolina and a U.S. Coast Guard command. Elizabeth City is incorporated and has its own mayor and city council. Elizabeth City has its own newspaper, *The Daily Advance*, and two AM and three FM broadcast stations. Based on these facts, HRETA concludes that Elizabeth City deserves its own television station.

7. HRETA argues that its petition for rulemaking satisfies the objectives of priority 2 of the Commission's allotment priorities by providing Elizabeth City with its first television broadcast station and by not depriving any community of a television station, since Hampton Roads will continue to receive service from WVEC, Hampton, Virginia. HRETA maintains that, although Hampton will no longer have two television stations (priority 4), Elizabeth City will have its first television station as required by priority 2, which ranks higher than priority 4. HRETA concludes that its proposed modification for WHRO-TV is consistent with the priorities and with the Commission's mandate under Section 307(b) of the Communications Act to promote fair, efficient and equitable distribution of service.<sup>8</sup>

8. We believe the public interest would be served by soliciting comments on this proposal since it would provide Elizabeth City, North Carolina with its first local video transmission service, if granted. We also propose to modify HRETA's authorization for station WHRO-TV to specify Elizabeth City, North Carolina as its community of license. In compliance with Section 1.420(i), we will not accept competing expressions of interest in the use of television channels \*16 at Elizabeth City. DTV channel \*16 can be allotted to Norfolk-Elizabeth City in compliance with the Commission's minimum distance separation requirements at Station WHRO-TV's current licensed transmitter site. The coordinates for channel \*16 at Norfolk-Elizabeth City are 36-48-31 N. and 76-30-12 W.

9. 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, for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Hampton-Norfolk, Virginia	*16	--
Norfolk, Virginia-Elizabeth City, North Carolina	--	*16

10. 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. We note that a showing of continuing interest is required before a channel is allotted.

11. 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

<sup>8</sup> See 47 U.S.C. § 307(b).

procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lauren A. Colby, Esq.  
10 E. Fourth Street  
P.O. Box 113  
Frederick, Maryland 21701

12. Parties must file an original and one copy 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 will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at the FCC Headquarters Building located at 445 12<sup>th</sup> Street, S.W., Room TW-A325, Washington, D.C. 20554. The filing hours at this location are Monday through Friday, 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. 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 FCC Headquarters at 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. 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.<sup>9</sup> Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

13. 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).

14. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, (202) 418-1647. 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

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<sup>9</sup> 47 C.F.R. § 1.7.

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

## 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) and 0.283, 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(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

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 freeze on the filing of petitions for rulemaking to establish new DTV channel allotments and for changes in community of license,<sup>10</sup> we will not consider counterproposals which propose new allotments or changes in community of license.

(b) With respect to petitions for rule making which 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. The person filing the comments shall serve comments on the petitioners. 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 Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.

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<sup>10</sup> *See* "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," Public Notice, 19 FCC Rcd 14810 (MB 2004).

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and one copy of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. An electronic copy should also be sent to [joyce.bernstein@fcc.gov](mailto:joyce.bernstein@fcc.gov).

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