

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

In the Matter of
Western Pacific Broadcast, LLC,
Amendment of Section 73.622(i)
Digital Television Table of Allotments
(Seaford, Delaware and Dover, Delaware)
MB Docket No. 13-40
RM-11691

NOTICE OF PROPOSED RULEMAKING

Adopted: February 12, 2013

Released: February 13, 2013

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 rulemaking filed by Western Pacific Broadcast, LLC ("Western Pacific"), the permittee of unbuilt station WMDE(TV), Channel 5, Seaford, Delaware. Western Pacific requests an amendment of the DTV Table of Allotments to delete Channel 5 at Seaford and substitute Channel 5 at Dover, Delaware. Western Pacific further requests modification of WMDE(TV)'s construction permit¹ to specify Dover, Delaware as the station's community of license.

2. Western Pacific also seeks a waiver of the Commission's freeze on the filing of petitions for rulemaking by television stations seeking to change their community of license.² In support of its waiver request, Western Pacific asserts that, because its proposed change in community of license does not involve any proposed change in facilities, grant of the petition would have no impact on the Post-Transition Table of DTV Allotments.

3. We believe that a waiver here would serve the public interest. The freeze on channel substitutions was instituted in 2011 following the release of the Commission's National Broadband Plan. The freeze is necessary during the Commission's rulemaking proceeding which seeks to reallocate spectrum from the broadcast television bands for broadband use and to repack full-power television channels to increase the efficiency of channel use.³ If changing WMDE(TV)'s community of license would require additional technical changes, such as moving the station's transmitter site or changing the channel, we would not grant Western Pacific's waiver request. However, since no additional technical changes are necessary or proposed,⁴ we believe that considering its proposal will not undermine the purpose of the

¹ File No. BNPCT-20110330AAY.

² Freeze on the Filing of Petitions for Digital Channel Substitutions, Public Notice, 26 FCC Rcd 7711 (MB 2011).

³ In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357 (2012).

⁴ WMDE-DT already meets the principal community coverage requirements of Section 73.625(a) of the Commission's rules, 47 C.F.R. § 73.625(a), with respect to Dover.

freeze.

4. Western Pacific seeks to invoke the provisions set forth in Section 1.420(i) of the Commission's Rules, 47 C.F.R. § 1.420(i), 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. 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 according to the Commission's television allotment priorities; and (3) the change would not deprive a community of its sole broadcast station.⁵

5. Western Pacific asserts that its proposal to reallocate Channel 5 to Dover is based on the technical specifications currently authorized for WMDE(TV) and therefore the new allotment will be mutually exclusive with the station's existing allotment.⁶ Western Pacific further asserts that its proposal would meet the Commission's allotment priorities⁷ because it would provide Dover with its first local television service. Western Pacific notes that Dover, with a 2010 Census population of 36,047, is the capital and second largest city in Delaware. The smaller community of Seaford would remain well-served after reallocation because full-power noncommercial television station WDPB(TV), Channel *44, would remain licensed to that community, Western Pacific contends.

6. We believe that Western Pacific's proposal warrants consideration. Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(i) of the Commission's rules,⁸ for the communities listed below, to read as follows:

City and State	Channel No.	
	Present	Proposed
Seaford, Delaware	5, *44	*44
Dover, Delaware	-	5

⁵ *Columbia and Edenton, North Carolina*, Notice of Proposed Rulemaking, 19 FCC Rcd 14618, 14618-19 (2004) ("Columbia and Edenton, North Carolina") (citing *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 M&O")).

⁶ *Petition for Rulemaking*, Technical Exhibit at 1.

⁷ The Commission's 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." *Columbia and Edenton, North Carolina*, 19 FCC Rcd at 14618 n.3 (citing *Sixth Report and Order on Television Allocations*, 41 F.C.C. 148 (1952)).

⁸ 47 C.F.R. § 73.622(i).

7. 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.

8. 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. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

M. Scott Johnson
Daniel A. Kirkpatrick
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

9. Parties must file an original and one copy of each filing.⁹ 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 Headquarter Building located at 445 12th 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.¹⁰ Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

10. 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).

11. For further information concerning the proceeding listed above, contact Peter D. Saharko,

⁹ See *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Reorganization*, GC Docket No. 10-44, Report and Order, 26 FCC Rcd 1594, ¶ 21 (2011).

¹⁰ See 47 C.F.R. § 1.7.

Video Division, Media Bureau, at (202) 418-1856 or Peter.Saharko@fcc.gov. 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

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 DTV Table of 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,¹¹ 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 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 one copy of all comments, reply comments, pleadings, briefs, or other documents shall be

¹¹ 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).

furnished the Commission. An electronic copy should also be sent to peter.saharko@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.