

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

In the Matter of	)	
	)	
	)	
Amendment of Section 73.622(i),	)	MB Docket No. 14-139
Post-Transition Table of DTV Allotments,	)	RM-11732
Television Broadcast Stations	)	
(Mount Vernon, Illinois)	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: September 4, 2014**

**Released: September 4, 2014**

**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 WPXS, Inc. (“WPXS”), the licensee of station WPXS(TV), channel 21, Mount Vernon, Illinois. By this petition, WPXS seeks the substitution of channel 11 for channel 21 at Mount Vernon.

2. WPXS also seeks a waiver of the Commission’s freeze on the filing of petitions for rulemaking by television stations seeking a channel substitution.<sup>1</sup> The Commission recently adopted rules to implement the broadcast television spectrum incentive auction authorized by the Spectrum Act.<sup>2</sup> By facilitating the voluntary return of television spectrum usage rights and reorganizing the broadcast television bands, the Commission will be able to recover a portion of ultra-high frequency (“UHF”) spectrum for new, flexible-use licenses suitable for mobile broadband services.<sup>3</sup> WPXS states that a waiver of the freeze will serve the public interest because by relinquishing channel 21, a UHF channel, the proposed channel substitution will “assist the Commission in the repacking process” by freeing up a UHF channel.<sup>4</sup> WPXS concludes that the proposed channel substitution will have “little or no adverse impact on

<sup>1</sup> *Freeze on the Filing of Petitions for Digital Channel Substitutions*, Public Notice, 26 FCC Rcd 7721 (MB 2011).

<sup>2</sup> *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Report and Order, FCC 14-50 (rel. June 2, 2014) (“*Incentive Auction Report and Order*”); see Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(J)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (“Spectrum Act”).

<sup>3</sup> *Incentive Auction Report and Order* at para. 1.

<sup>4</sup> WPXS Petition at 2.

the ability of other stations to enter the spectrum auction, including the ability to voluntarily relocate.”<sup>5</sup>

3. In support of its petition for rulemaking, WPXS states that the proposed channel substitution “will permit the station to improve its service to the public.”<sup>6</sup> Specifically, WPXS explains the proposed channel substitution will result in no loss of service, but rather a substantial service population gain of approximately 42 percent.<sup>7</sup>

4. We believe a waiver of the freeze on the filing of channel substitution rulemaking petitions would serve the public interest in this case. One of the key objectives of the Spectrum Act is for the Commission to clear UHF spectrum for new uses through a reverse auction and repacking process.<sup>8</sup> By proposing to voluntarily relinquish a UHF channel, even before the Commission has commenced the reverse auction and repacking process, WPXS’ request will further the goal of clearing UHF spectrum for new uses.<sup>9</sup> Moreover, the request will not impact our repacking flexibility.<sup>10</sup>

5. We also believe that WPXS’ petition for rulemaking warrants consideration. Channel 11 can be substituted for channel 21 at Mount Vernon, Illinois as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) of the Commission’s rules,<sup>11</sup> at coordinates 38-40-13 N. and 86-34-46 W. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the Commission’s rules.<sup>12</sup> We propose to substitute channel 11 for channel 21 for station WPXS(TV) at Mount Vernon with the following specifications:

State and City	DTV Channel	DTV Power (kW)	Antenna HAAT (m)
Mount Vernon, Illinois	11	160	208

Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(i) of the Commission’s rules,<sup>13</sup> for the community listed below, to read as follows:

<sup>5</sup> *Id.*

<sup>6</sup> WPXS Petition at 1-2.

<sup>7</sup> WPXS Aug. 8, 2014 Supplement at 2.

<sup>8</sup> *See Report and Order* at para. 1.

<sup>9</sup> During the repacking process, the Spectrum Act prohibits the Commission from clearing UHF spectrum by involuntarily reassigning a station from the UHF band to the VHF band. *See* WPXS Petition at 2 (citing Spectrum Act § 6403(b)(3)). Rather, any reassignments from UHF to VHF must be pursuant to voluntary relinquishments through reverse auction bids. *See Report and Order* at n.379.

<sup>10</sup> *See Report and Order* at n.649 (explaining that protection of VHF stations will have less impact on repacking flexibility than protection of UHF stations).

<sup>11</sup> 47 C.F.R. § 73.625(a).

<sup>12</sup> 47 C.F.R. §§ 73.616 and 73.623.

<sup>13</sup> 47 C.F.R. § 73.622(i).

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Mount Vernon, Illinois	21	11

6. The Commission's authority to institute rulemaking proceedings, required showings, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. Pursuant to section 73.623(h) of the rules, mutually-exclusive applicants will be provided a 90-day period of time, from the date of a public notice identifying mutually-exclusive proposals, to resolve their mutual-exclusivity via engineering amendment or settlement.<sup>14</sup> If we receive an application on or before the date for filing initial comments in this proceeding, which proposes a facility which is mutually-exclusive with the proposal set forth herein, we will issue a public notice and the parties will have 90 days within which to resolve their mutual-exclusivity. If the parties resolve their mutual-exclusivity, we will complete the rulemaking process by issuing the appropriate order. If the parties are unable to resolve their mutual-exclusivity, we will terminate this proceeding and dismiss the application.

7. 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:

Robert L. Olender, Esq.  
 Koerner & Olender, P.C.  
 11913 Grey Hollow Court  
 North Bethesda, MD 20852

8. Parties must file an original and one copy of each filing.<sup>15</sup> 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

<sup>14</sup> 47 C.F.R. § 73.623(h)(3).

<sup>15</sup> *Amendment of Certain of the Commission's Part I Rules of Practice and Procedure and Part 0 of Commission Reorganization*, GC Dkt. No. 10-4, Report and Order, 26 FCC Rcd 1594, para. 21 (2011).

Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary.<sup>16</sup> Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rulemaking 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).

10. For further information concerning the proceeding listed above, contact Adrienne Denysyk, Media Bureau, (202) 418-2651. For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rulemaking 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

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<sup>16</sup> 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) 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 Rulemaking* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rulemaking* 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>17</sup> we will not consider counterproposals which propose new allotments or changes in community of license.

(b) With respect to petitions for rulemaking 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 Rulemaking* 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.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.419(b), an

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<sup>17</sup> Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes, Public Notice, 19 FCC Rcd 14810 (MB 2004).

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 [adrienne.denysyk@fcc.gov](mailto:adrienne.denysyk@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.