

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

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

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: May 1, 2014**

**Released: May 1, 2014**

By the Chief, Video Division, Media Bureau:

1. At the request of Western Pacific Broadcast, LLC (“Western Pacific”), the permittee of unbuilt station WMDE(TV), channel 5, Seaford, Delaware, the Media Bureau, Video Division has before it a *Notice of Proposed Rulemaking* proposing to amend the Post-Transition Table of DTV Allotments (“the Table of Allotments”)<sup>1</sup> to delete channel 5 at Seaford and substitute channel 5 at Dover, Delaware and to modify WMDE(TV)’s construction permit to specify Dover as the station’s community of license.<sup>2</sup> Western Pacific filed comments in support of the proposal. PMCM TV, LLC (“PMCM”), the licensee of KJWP, channel 2, Wilmington, Delaware and applicant for a construction permit for channel 2 at Middletown Township, New Jersey, filed comments opposing the proposed change in community of license, to which Western Pacific filed a reply. This *Report and Order* (1) grants the Petition for Rulemaking filed by Western Pacific to request a change in its community of license to Dover; (2) amends the Table of Allotments to reflect the change; and (3) modifies WMDE’s construction permit to reflect that the station’s community of license is Dover.

**BACKGROUND**

2. On April 28, 2010, the Video Division issued a *Report and Order* allotting channel 5 to Seaford, Delaware,<sup>3</sup> pursuant to section 307(b) and the first sentence of section 331(a) of the Communications Act of 1934, as amended (“the Act”), which requires the Commission to allot at least one commercial VHF channel to each state if technically feasible.<sup>4</sup> PMCM, which participated in the proceeding, did not object to the channel 5 allotment. PMCM did urge, however, that any allotment not cause impermissible interference to its June 15, 2009 notification, made pursuant to the second sentence of section 331(a), that it agreed to the facility proposed in the reallocation of KJWY(TV), channel 2 from Jackson, Wyoming to Wilmington, Delaware (“Delaware Reallocation Request”), while the Media Bureau’s dismissal

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<sup>1</sup> 47 C.F.R. § 73.622(i).

<sup>2</sup> *Western Pacific Broadcast, LLC, (Seaford, Delaware and Dover, Delaware)*, Notice of Proposed Rulemaking, 28 FCC Rcd 1024 (Vid. Div. 2013) (“*NPRM*”). The *NPRM* was issued in response to a Petition for Rulemaking filed by Western Pacific on October 9, 2012 (“*Western Pacific Petition for Rulemaking*”).

<sup>3</sup> *Seaford, Delaware*, Report and Order, 25 FCC Rcd 4466 (Vid. Div. 2010) (“*Seaford Report and Order*”).

<sup>4</sup> 47 U.S.C. §§ 307(b), 331(a).

of that notification was on appeal.<sup>5</sup> Another party, Broadcast Maximization Committee (“BMC”), timely filed for reconsideration of the *Seaford Report and Order*, which was denied on February 13, 2013.<sup>6</sup> BMC argued in part that channel 2 or 3 should be allotted in lieu of channel 5 at Seaford. PMCM did not file for reconsideration but instead opposed the BMC petition, arguing that BMC’s counterproposal would be mutually-exclusive with its Delaware Reallocation Request, which was still on appeal. After the U.S. Court of Appeals for the District of Columbia Circuit, in December 2012, reversed the Commission decision to deny PMCM’s Delaware Reallocation Request, as well as PMCM’s June 15, 2009 notification that it agreed to the reallocation of KVVN(TV), channel 3, from Ely, Nevada to Middletown Township, New Jersey,<sup>7</sup> PMCM filed for reconsideration of both the *Seaford Report and Order* and the *Seaford MO&O on Reconsideration*.

3. While BMC’s petition for reconsideration of the *Seaford Report and Order* was pending, Western Pacific filed its petition requesting a change in community of license pursuant to section 1.420(i) of the Commission’s Rules.<sup>8</sup> That rule provides that in the course of a rulemaking proceeding to amend the Table of Allotments, the Commission may modify a station’s license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest where the amended allotment would be mutually exclusive with the licensee’s or permittee’s present allotment.<sup>9</sup> In considering a reallocation proposal, the Commission compares the existing allotment versus the proposed allotment to determine whether the change in allotment will result in a preferential arrangement of allotments.<sup>10</sup>

4. In its rulemaking petition, Western Pacific asserted that the proposed change in community of license would accomplish a preferential arrangement of allotments because it would provide Dover, the capital and second largest city in Delaware, with its first local television service. Western Pacific further maintained that the smaller community of Seaford would remain well-served after the reallocation because (1) noncommercial television station WDPB(TV), channel \*44, would remain licensed to that community, and (2) Western Pacific was not proposing any change in WMDE’s technical facilities, which, when built, would provide principal community coverage to Seaford. Western Pacific

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<sup>5</sup> By letter dated December 18, 2009, the Media Bureau denied the Delaware Reallocation Request and PMCM appealed to the Commission. *PMCM TV, LLC, c/o Harry F. Cole, Esq.*, 24 FCC Rcd 14588 (MB 2009), *aff’d on Memorandum Opinion and Order*, 26 FCC Rcd 13696 (2011).

<sup>6</sup> *Seaford, Delaware*, Memorandum Opinion and Order on Reconsideration, 24 FCC Rcd 1167 (Vid. Div. 2013)(“*Seaford MO&O on Reconsideration*”).

<sup>7</sup> *PMCM TV, LLC v. FCC*, 701 F.3d 380 (D.C. Cir. 2012)(“*PMCM TV*”). The Media Bureau approved the reallocations in March 2013. *Reallocation of Channel 2 from Jackson, Wyoming to Wilmington, Delaware*, Report and Order, 28 FCC Rcd 2823 (MB 2013); *Reallocation of Channel 3 from Ely, Nevada to Middletown Township, New Jersey*, Report and Order, 28 FCC Rcd 2825 (MB 2013).

<sup>8</sup> 47 C.F.R. § 1.420(i). Section 307(b) of the Act, 47 U.S.C. § 307(b), requires that station assignments be made to “communities.” See also *In the Matter of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 101 (1982) (*Assignment Policies and Procedures*); *Mighty-Mac Broadcasting Co.*, Second Report and Order, 101 FCC 2d 303 (1985).

<sup>9</sup> 47 C.F.R. § 1.420(i); see also *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>10</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)(“*Sixth Report and Order*”). 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.

also demonstrated that its proposal to reallocate channel 5 to Dover is mutually exclusive with the station's existing allotment.<sup>11</sup>

5. Finally, Western Pacific sought a waiver of the Commission's freeze on the filing of petitions for rulemaking to make changes to the Table of Allotments. The Media Bureau first imposed a freeze on the filing of rulemaking petitions to change channels and communities of license in the Table of Allotments in connection with the development of a channel election and repacking process to assign all eligible television broadcasters a post-transition DTV channel. The Bureau found that the "freeze is a necessary first step to ensure a stable television database" in connection with this process.<sup>12</sup> The Media Bureau lifted the freeze on the filing of rulemaking petitions to request channel changes in 2008, but reimposed the freeze on May 31, 2011.<sup>13</sup> The Bureau noted that after it lifted the freeze, the National Broadband Plan was released, recommending, among other things, that the Commission reallocate spectrum from the television broadcast bands to enable the expansion of new broadband services, and also consider methodologies for repacking television channels to increase the efficiency of channel use. The Bureau concluded that a freeze was appropriate "[t]o permit the Commission to evaluate its reallocation and repacking proposals and their impact on [the Table of Allotments]."<sup>14</sup> In support of its waiver request, Western Pacific asserted that the proposed community change would not undermine the underlying purpose of the freeze because it involved no change in the station's currently authorized technical facilities.<sup>15</sup>

6. The Video Division issued the *NPRM* on March 4, 2013, granting Western Pacific's request for a waiver of the freeze on the filing of rulemaking petitions to make changes in the Table of Allotments.<sup>16</sup> The Video Division concluded that, "since no additional technical changes are necessary or proposed, . . . considering [Western Pacific's] proposal [would] not undermine the purpose of the freeze."<sup>17</sup> The *NPRM* accordingly sought comment on the proposal to amend the Table of Allotments to delete channel 5 at Seaford and substitute channel 5 at Dover.<sup>18</sup>

7. PMCM advances four main arguments in its comments opposing the proposed change of community of license. First, PMCM contends the Dover proposal is not ripe for consideration because the validity of the initial allotment of channel 5 to Seaford in 2010 is "unsettled" in light of PMCM's pending Petition for Reconsideration of that allotment.<sup>19</sup> PMCM reiterates the claims raised in its pending Petition for Reconsideration of the *Seaford MO&O on Reconsideration*. Specifically, PMCM claims that there was no basis in section 331(a) of the Act for the Commission to make that allotment in 2010, given the fact the PMCM filed its Delaware Reallocation Request in 2009. Thus, PMCM asserts

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<sup>11</sup> Western Pacific Petition for Rulemaking, Technical Exhibit at 1.

<sup>12</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).

<sup>13</sup> *Freeze on the Filing of Petitions for Digital Channel Substitutions, Effective Immediately*, Public Notice, 26 FCC Rcd 7721 (MB 2011).

<sup>14</sup> *Id.*

<sup>15</sup> Western Pacific Petition for Rulemaking at 4.

<sup>16</sup> *NPRM*, 28 FCC Rcd at 1024-25.

<sup>17</sup> *Id.* at 1024.

<sup>18</sup> *Id.*

<sup>19</sup> PMCM Comments In Opposition to Notice of Proposed Rulemaking (Apr. 3, 2013) ("PMCM Comments") at 2-3.

that “normal” allotment procedures, where a proponent advances a request to provide service to a particular community and pledges to construct the proposed facility, should have been followed instead.<sup>20</sup>

8. Second, PMCM asserts that waiver of the Commission’s freeze is unwarranted because it is “entirely inconsistent with the purposes underlying the . . . [f]reeze and imprudently risk[s] collateral damage to the public interest.”<sup>21</sup> PMCM contends that the “waiver request must be viewed in the incentive auction’s overall context,”<sup>22</sup> not just whether current transmission facilities will change. It contends that “grant of the waiver could easily result in the removal of all local television transmission service from Seaford, Delaware [if WDPB(TV) participates in the auction], an outcome contrary to the public interest and one that [the freeze] is designed to circumvent.”<sup>23</sup>

9. Third, PMCM argues that Western Pacific’s proposal should be rejected because it would frustrate the *Seaford Report and Order’s* “aspirations for a station targeting the needs of underserved areas of southern Delaware . . . even before the station is ever built,” and would therefore be contrary to the public interest considerations which were the basis for the original allotment.<sup>24</sup> Fourth, and finally, PMCM asserts that Western Pacific’s proposal is contrary to other Commission allotment priorities. PMCM notes that Seaford is a smaller community that receives only four over-the-air television services, while Dover is a larger community located in the larger and better-served Philadelphia DMA.<sup>25</sup> PMCM urges the Commission to follow radio service allotment policies adopted to prevent the movement of broadcast audio “service from rural areas to more urban areas absent a compelling show of need.”<sup>26</sup>

10. In its reply comments, Western Pacific contends that both the initial channel 5 allotment to Seaford and the proposed reallocation of that channel to Dover comply with the Commission’s rules and policies. Western Pacific disagrees with PMCM’s contention that the validity of the Seaford allotment is in question. Since the Video Division approved the allotment three years ago, Western Pacific was the winning bidder at the auction of the channel 5 spectrum, has already been granted a construction permit, and that grant is final. Western Pacific argues that upending the allotment would

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<sup>20</sup> *Id.* PMCM contends that nothing in section 331(a) provides a basis for allotting a second channel to Delaware. According to PMCM, once the court issued its decision in *PMCM TV* ordering Commission approval of the Delaware Reallocation Request, there was no “VHF void” in Delaware and thus the Media Bureau had no basis to act under section 331(a) in allotting channel 5 to Seaford.

<sup>21</sup> PMCM Comments at 4.

<sup>22</sup> *Id.* at 5. In October 2012, the FCC initiated a rulemaking proceeding to implement the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (“Spectrum Act”), which authorized the Commission to conduct incentive auctions as a tool to meet the Nation’s spectrum needs. *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357 (2012) (“*Incentive Auction NPRM*”). The incentive auction will have three major pieces: (1) a reverse auction in which broadcast television licensees submit bids to voluntarily relinquish spectrum usage rights in exchange for payment; (2) a reorganization or repacking of the broadcast television bands in order to free up a portion of the UHF band for other uses; and (3) a forward auction of initial licenses for flexible use of the newly available spectrum. *Id.* at 12359.

<sup>23</sup> PMCM Comments at 4-6.

<sup>24</sup> *Id.* at 7-9.

<sup>25</sup> *Id.* at 9-10.

<sup>26</sup> *Id.* (citing *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12830 (2012)).

flout the principle that government licensees have a strong and legitimate interest in administrative finality.<sup>27</sup>

11. Western Pacific also argues that the ruling in *PMCM TV* does not qualify as “changed circumstances” that justify an untimely challenge to the *Seaford Report and Order* three years after the fact. Western Pacific notes that PMCM filed its court appeal while the *Seaford Report and Order* was still pending on reconsideration but failed to ask the Commission or the court to stay any further action in the Seaford proceeding.<sup>28</sup> In addition, Western Pacific disputes PMCM’s contention that the Division improperly relied on section 331(a) when allotting channel 5 to Seaford, arguing that the first sentence of Section 331(a) permits multiple VHF allotments to any state subject to the overriding requirement of technical feasibility.<sup>29</sup>

12. Western Pacific also counters PMCM’s contention that the Video Division’s waiver of the freeze on the filing of petitions for rulemaking to change the Table of Allotments was inappropriate. Western Pacific contends that PMCM’s discussion about whether WDPB(TV), the other station licensed to Seaford, will bid in a future incentive auction is merely speculative. Western Pacific notes further support for the waiver, namely that Western Pacific is not proposing any technical changes to WMDE(TV)’s operation on channel 5 and “low VHF channels near metropolitan areas are likely to have little or no impact on the allocation and repacking of television spectrum that may occur as a result of the incentive auction.”<sup>30</sup>

13. Finally, Western Pacific argues that reassigning channel 5 from Seaford to Dover would result in a preferential arrangement of television allotments in Delaware. Western Pacific also disputes PMCM’s reliance on language in the *Seaford Report and Order* as a basis for opposing the change of community of license. Western Pacific contends that the Bureau’s observation in the *Seaford Report and Order* that allotment of a new channel in southern Delaware created a more equitable distribution of allotments was not intended to be nor was it an analysis of whether the allotment of channel 5 at Dover would be superior to the allotment of channel 5 at Seaford under the Commission’s television allotment priorities.<sup>31</sup>

## DISCUSSION

14. We believe the public interest would be served by reallocating channel 5 from Seaford, Delaware to Dover, Delaware, and modifying the construction permit for WMDE(TV) accordingly. Our analysis is based on our determination that the reallocation will result in a preferential arrangement of allotments. The reallocation would provide Dover, the capital and second largest city in Delaware, with its first local television service. Seaford would continue to have a local television service on channel \*44, even with the reassignment of channel 5 to Dover. Moreover, because the change in community of license does not require any technical changes to the presently authorized channel 5 facilities – and Western Pacific does not propose to make any – the reallocation would not expand or diminish the noise limited contour of the facility authorized in Western Pacific’s construction permit. This means there would be no change in

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<sup>27</sup> Western Pacific Reply Comments In Response to Notice of Proposed Rulemaking (Apr. 18, 2013) (“Western Pacific Reply”) at 7-8.

<sup>28</sup> *Id.* at 9-10.

<sup>29</sup> *Id.* at 11-12.

<sup>30</sup> *Id.* at 12-14. One of the Commission’s incentive auction goals is to repurpose the maximum amount of UHF band spectrum for flexible licensed and unlicensed use, and when it repacks broadcast television spectrum, it may not involuntarily reassign a licensee from a UHF to a VHF channel or from a high VHF channel (7 through 13) to a low VHF channel (2 through 6). *Incentive Auction NPRM*, 27 FCC Rcd at 12369-70, para. 30.

<sup>31</sup> Western Pacific Reply at 14-16.

Western Pacific's proposed contour coverage of Seaford. Therefore, we conclude that Western Pacific's proposal results in a preferential arrangement of television allotments under section 307(b) of the Act and the Commission's allotment priorities.

15. We further conclude that PMCM's arguments in opposition are without merit. Western Pacific was granted a construction permit for channel 5 at Seaford in 2011 following completion of Auction 90,<sup>32</sup> and that grant became final in June 2011. The Commission has long encouraged finality of administrative proceedings, and the U.S. Court of Appeals for the District of Columbia Circuit has held that a licensee has a strong and legitimate interest in administrative repose.<sup>33</sup> PMCM does not point to any case law in support of its contention that the court's decision in *PMCM TV* ordering the Commission to issue PMCM a license for channel 2 at Wilmington somehow forms the basis for undoing a final grant of a construction permit for Seaford that is not mutually-exclusive with PMCM's Delaware Reallocation Request. Moreover, contrary to PMCM's argument, the validity of the allotment of channel 5 to Seaford, Delaware in 2010 is not "unsettled." Our *MO&O on Further Reconsideration* released today dismisses PMCM's petition for reconsideration challenging the validity of that allotment.<sup>34</sup>

16. We also disagree with PMCM's assertion that our grant of a waiver in the *NPRM* of the freeze on petitions for rulemaking to make changes to the Table of Allotments was inappropriate and "entirely inconsistent with the purposes underlying the . . . [freeze] . . . ." As discussed above, the underlying purpose of the Media Bureau's freezes on rulemaking petitions has been to ensure a stable database, while the Commission evaluates the reallocation and repacking of broadcast spectrum.<sup>35</sup> Because Western Pacific is only requesting a change in its community of license, with no changes in its technical facilities, granting its proposal does not undermine our need for a stable database.<sup>36</sup> Moreover, the grant would serve the public interest by resulting in a more preferential arrangement of allotments by granting Dover its first channel allotment.<sup>37</sup> Given that the underlying purpose of the freeze is not implicated by the proposal, granting a waiver here does not harm the public interest. Finally, we note that PMCM's comments about whether WDPB(TV), the other station licensed to Seaford, might participate in the incentive auction, resulting in the removal of its present service to Seaford, are speculative and therefore entitled to no consideration.<sup>38</sup>

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<sup>32</sup> See *Auction of VHF Commercial Television Station Construction Permits Closes*, Public Notice, 26 FCC Rcd 1916 (2011).

<sup>33</sup> See *Greater Boston Television Corporation v. FCC*, 463 F.2d 268 (D.C. Cir. 1971); *California Metro Mobile Communication v. FCC*, 365 F.3d 38, 45 (D.C. Cir. 2004); see also *Radio Para La Raza*, Memorandum Opinion and Order, 40 FCC 2d 1102, 1104 (1973); *Birach Broad. Corp.*, 16 FCC Rcd 5015, 5018 (2001), *appeal dismissed sub nom. New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002).

<sup>34</sup> *Amendment of Section 73.622(i), Post Transition Table of DTV Allotments, Television Broadcast Stations (Seaford, Delaware)*, Memorandum Opinion and Order on Further Reconsideration, MB Docket No. 09-230, RM-11586, DA 14-546 (Vid. Div. May 1, 2014) ("*MO&O on Further Reconsideration*").

<sup>35</sup> See para. 5, *supra*.

<sup>36</sup> We also note that any subsequent modifications to Western's authorization for channel 5 will be subject to the Media Bureau's April 5, 2013 Public Notice imposing limitations on the filing of applications for full power television stations. See *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, Public Notice, 28 FCC Rcd 4364, 4365 (MB 2012) (Media Bureau will not accept modification applications for changes to existing television service areas that would increase a full power station's noise-limited contour in one or more directions beyond the station's authorized facilities as of April 5, 2013).

<sup>37</sup> *Sixth Report and Order*, 41 F.C.C. at 167-173.

<sup>38</sup> *Nexstar Broadcasting, Inc.*, Letter Decision, 23 FCC Rcd 3528, 3534 (Vid. Div. 2008) (dismissing speculative arguments); see also *Qwest Communications Intern, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 26303,

(continued...)

17. We further disagree with PMCM's contention that the proposed reallocation would be contrary to the public interest considerations which were the basis for the original channel 5 allotment at Seaford. The *Seaford R&O* concluded that allotment of a new channel in southern Delaware, rather than the more populated Wilmington area to the north, would create a more equitable distribution of allotments because southern Delaware received service from a much smaller number of stations than northern Delaware, which is also served by Philadelphia, Pennsylvania stations.<sup>39</sup> This conclusion, however, was not an analysis of whether the allotment of channel 5 at Dover would be superior to the allotment of channel 5 at Seaford under the Commission's allotment priorities, and WMDE will continue to have the same southern Delaware coverage area with Dover as its community of license that it currently would have with Seaford as its community of license. For the reasons stated above, we conclude that reallocating channel 5 from Seaford, which currently has two channel allotments, to Dover is consistent with our allotment priorities because WMDE would be the first station allotted to the state's capital and second largest city, while at the same time providing the same technical service to Seaford.

18. Nor do we believe that changing WMDE's community of license to Dover would frustrate Commission allotment priorities aimed at reaching underserved areas, as PMCM claims. In the *Rural Radio* proceeding, the Commission adopted modified criteria for radio allotments to address concerns that such new allotments, as well as community of license changes, were more likely to provide additional service to urbanized rather than rural areas.<sup>40</sup> Beyond the fact that this policy is not applicable to television, the change proposed here would result in the local service moving from the Salisbury, Maryland urbanized area to the Dover, Delaware urbanized area,<sup>41</sup> not from a rural area to an urbanized area as PMCM implies.<sup>42</sup> In contrast, our action here is consistent with the second of the key allotment priorities for broadcast television service, namely "to provide each community with at least one television broadcast station."<sup>43</sup> Providing Dover with its first local television service directly supports this allotment priority.<sup>44</sup>

### **ORDERING CLAUSES**

19. Accordingly, IT IS ORDERED, That the Petition for Rulemaking filed by Western Pacific Broadcast, LLC, permittee of Station WMDE(TV), channel 5, Seaford, Delaware, IS GRANTED.

20. IT IS FURTHER ORDERED, That 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, the Post-Transition Table of DTV Allotments, Section

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26474 (2002) (same). PMCM also assumes that a winning bid by the licensee of WDPB(TV) would result in withdrawal of service from Seaford. PMCM Comments at 5-6. Section 6403(a)(2) of the Spectrum Act, however, provides that the reverse auction of television spectrum shall include at least three different bid options, two of which do not result in termination of service. *See Incentive Auction NPRM*, 27 FCC Rcd at 12385, para. 84.

<sup>39</sup> *Seaford R&O*, 25 FCC Rcd at 4470-71, para. 12.

<sup>40</sup> *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd 2556, 2567-71 (2011).

<sup>41</sup> U.S. Census Bureau, *Delaware: 2010, Population and Housing Unit Counts* (2012) ("2010 Delaware Census Report") at IV-1.

<sup>42</sup> PMCM Comments at 9.

<sup>43</sup> *Sixth Report and Order*, 41 F.C.C. at 167, para. 63.

<sup>44</sup> *2010 Delaware Census Report* at 12.

73.622(i) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:



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

21. IT IS FURTHER ORDERED, That the authorization for station WMDE(TV) IS MODIFIED to reflect that the station's community of license is Dover, Delaware.

22. 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>45</sup>

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

24. For further information concerning the proceeding listed above, contact Peter Saharko, Media Bureau, (202) 418-1856.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

<sup>45</sup> See 47 U.S.C. § 801(a)(1)(A).