

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

In the Matter of
Gray Television License, LLC and
New Rushmore Radio, Inc.,
Amendment of Section 73.622(i)
Digital Television Table of Allotments
(Scottsbluff, Nebraska and Sidney, Nebraska)
MB Docket No. 16-29
RM-11758

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 16, 2016

Released: May 16, 2016

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. At the request of Gray Television License, LLC, licensee of station KDUH-TV, channel 7, Scottsbluff, Nebraska, and New Rushmore Radio, Inc., former licensee of KDUH-TV (collectively, Petitioners), the Commission has before it an unopposed Notice of Proposed Rulemaking seeking to amend the Post-Transition Table of DTV Allotments (Table of Allotments) to delete channel 7 at Scottsbluff, Nebraska and to substitute channel 7 at Sidney, Nebraska. Petitioners further request modification of KDUH-TV's license to specify Sidney as the station's community of license. Petitioners filed comments in support of the proposal. We received no opposing comments. For the reasons discussed below, this Report and Order (1) grants the Petition for Rulemaking filed by Petitioners to request a change in the station's community of license to Sidney; (2) amends the Table of Allotments to reflect the change; and (3) modifies KDUH-TV's license to reflect that the station's community of license is Sidney.

II. BACKGROUND

2. Petitioners filed their rulemaking petition requesting a change in community of license pursuant to section 1.420(i) of the Commission's Rules. 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

1 File No. BALCDT-20150917ADD (granted Feb. 12, 2016, consummated Feb. 16, 2016).

2 Amendment of Section 73.622(i), Post Transition Table of Allotments, Digital Television Broadcast Stations (Scottsbluff, Nebraska and Sidney, Nebraska), Notice of Proposed Rulemaking, 31 FCC Rcd 1058 (Vid. Div. 2016).

3 47 C.F.R. § 73.622(i).

4 File No. BLCDDT-20050914AAH.

5 47 C.F.R. § 1.420(i). Section 307(b) of the Communications 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); Mighty-Mac Broadcasting Co., Second Report and Order, 101 FCC 2d 303 (1985).

licensee's present allotment.⁶ 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.⁷

3. In its rulemaking petition, Petitioners assert that their proposal to reallocate channel 7 to Sidney is based on the technical specifications currently authorized for KDUH-TV;⁸ therefore the new allotment will be mutually exclusive with the station's existing allotment. Petitioners further state that their proposal would meet the Commission's allotment priorities because it will provide Sidney with its first local television service.⁹ Petitioners note that Sidney, with a 2010 Census population of 6,757 people, is the county seat of Cheyenne County and the largest city in the county.¹⁰ Furthermore, Petitioners state Scottsbluff would remain well-served after the proposed reallocation because full-power television station KSTF(TV), channel 29, would remain licensed to that community.¹¹

4. Petitioners, in its rulemaking petition, also sought a waiver of the Commission's freeze on the filing of petitions for rulemaking by television stations seeking to change their community of license.¹² The freeze on channel substitutions was instituted in 2011 following the release of the Commission's National Broadband Plan. The freeze is necessary as the Commission seeks to reallocate spectrum from the broadcast television bands for broadband use and to repack full-power television channels through a broadcast television incentive auction.¹³ In support of its waiver request, Petitioners asserted that, because the proposed change in community of license does not involve any proposed change in technical facilities, grant of the petition would have no impact on the Post-Transition Table of DTV Allotments.¹⁴

5. The Video Division issued the *NPRM* on February 8, 2016, granting Petitioners request for a waiver of the freeze on the filing of rulemaking petitions to make changes to the Table of Allotments.¹⁵ The Video Division concluded that, "since no additional technical changes are necessary or proposed, we believe that considering their proposal will not undermine the purpose of the freeze."¹⁶ The

⁶ 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).

⁷ 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.

⁸ KDUH-TV Petition for Rulemaking, Technical Exhibit at 1.

⁹ KDUH-TV Petition for Rulemaking at 3.

¹⁰ *Id.* (citing "United States Census Bureau American Fact Finder," available at http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml; "About Cheyenne County," available at <http://www.cheyennecountyne.net/#!/about-us?clse>).

¹¹ KDUH-TV Petition for Rulemaking at 3.

¹² *Freeze on the Filing of Petitions for Digital Channel Substitutions*, Public Notice, 26 FCC Rcd 7711 (MB 2011).

¹³ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 (2014) (subsequent citations omitted).

¹⁴ KDUH-TV Petition for Rulemaking at 5-6.

¹⁵ *NPRM*, 31 FCC Rcd at 1059-60, para. 3.

¹⁶ *Id.*

NPRM accordingly sought comment on the proposal to amend the Table of Allotments to delete channel 7 at Scottsbluff and substitute channel 7 at Sidney.¹⁷

6. In their Comments, Petitioners reiterate their support for the proposed substitution and associated waiver of the Commission's freeze on the filing of rulemaking petitions to make changes to the Table of Allotments. In particular, Petitioners stress that the change in community of license to Sidney, Nebraska will represent a preferential arrangement of allotments by providing Sidney with its first full-power television station.¹⁸

III. DISCUSSION

7. We believe the public interest will be served by reallocating channel 7 from Scottsbluff, Nebraska to Sidney, Nebraska, and modifying the KDUH-TV license accordingly.¹⁹ Our analysis is based on our determination that the allotment will result in a preferential arrangement of allotments. The reallocation will provide Sidney, the county seat of Cheyenne County and the largest city in the county,²⁰ with its first local television service. This reallocation is therefore 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."²¹ Providing Sidney with its first local television service directly supports this allotment priority. Furthermore, KSTF(TV) will continue to be allotted to Scottsbluff as a local television service. Moreover, because the change in community of license does not require any technical changes to the presently authorized channel 7 facility – and Petitioners do not propose to make any – the reallocation will not expand or diminish the noise limited contour of the facility authorized in KDUH-TV's license and the population served by the station will not change as a result of the proposal. This means there will be no change in KDUH-TV's contour coverage consistent with the underlying purpose of the freeze on the filing of rulemaking petitions to make changes to the Table of Allotments. Therefore, we conclude that Petitioner's proposal results in a preferential arrangement of television allotments under section 307(b) of the Act and the Commission's allotment priorities.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, That the Petition for Rulemaking filed by Gray Television License, LLC, licensee of KDUH-TV, channel 7, Scottsbluff, Nebraska, and New Rushmore Radio, Inc., former licensee of KDUH-TV, IS GRANTED.

9. 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,²² and sections 0.61, 0.204(b), and 0.283 of the Commission's rules,²³ IT IS ORDERED, That effective 30 days after the date of publication of this Report and Order in the Federal Register, the Post-Transition Table of DTV

¹⁷ *Id.* at 1060-61, para. 6.

¹⁸ Petitioners Comments at 1-2.

¹⁹ By modifying KDUH-TV's license to specify Sidney, Nebraska, the station's Designated Market Area (DMA) will change from the Cheyenne-Scottsbluff DMA to the Denver DMA.

²⁰ "United States Census Bureau American Fact Finder," available at http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml; "About Cheyenne County," available at <http://www.cheyennecountyne.net/#!/about-us?clse>.

²¹ *Sixth Report and Order*, 41 F.C.C. at 167, para. 63.

²² 47 U.S.C. §§ 4(i), 5(c)(1), 303(g), (r), 307(b).

²³ 47 C.F.R. §§ 0.61, 0.204(b), 0.283.

Allotments, section 73.622(i) of the Commission's rules,²⁴ IS AMENDED, with respect to the communities listed below, to read as follows:

City and State	Channel No.
Scottsbluff, Nebraska	17, 29
Sidney, Nebraska	7

10. IT IS FURTHER ORDERED, That the authorization for station KDUH-TV,²⁵ WILL BE MODIFIED to reflect that the station's community of license is Sidney, Nebraska.

11. 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.²⁶

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

13. For further information concerning the proceeding listed above, contact Adrienne Denysyk, Media Bureau, (202) 418-2651.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁴ 47 C.F.R. § 73.622(i).

²⁵ Facility ID No. 17683.

²⁶ See 47 U.S.C. § 801(a)(1)(A).