

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

In the Matter of)
)
)
Amendment of Section 73.622(i),) MB Docket No. 17-187
Post-Transition Table of DTV Allotments,) RM-11792
Television Broadcast Stations)
(Anchorage, Alaska))

NOTICE OF PROPOSED RULEMAKING

Adopted: July 17, 2016

Released: July 17, 2016

Comment Date: [15 days after date of publication in the Federal Register]

Reply Comment Date: [25 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 Gray Television Licensee, LLC (Gray), the licensee of KYES-TV, channel 5, Anchorage, Alaska. Gray requests the substitution of channel 7 for channel 5 at Anchorage.

2. The Commission instituted a freeze on the acceptance of rulemaking petitions by full power television stations requesting channel substitutions in May 2011, and a freeze on the filing of modification applications by full power and Class A television stations that would increase a station's noise-limited or protected contour beyond the station's currently licensed or authorized facility in April 2013. Gray asks that the Commission waive these freezes to permit KYES to relocate its transmitter and utilize upgraded equipment, thereby improving its over-the-air signal to better serve viewers.

3. In support of its waiver request, Gray states that it acquired KYES in June 2016 pursuant to a failing station waiver, and in that waiver request committed to improve the station's service to viewers by upgrading its broadcast facilities. KYES currently operates from a tower that

1 Public Notice, "Freeze on the Filing of Petitions for Digital Channel Substitutions, Effective Immediately," 26 FCC Rcd 7721 (MB 2011) (Channel Substitution Freeze Public Notice).

2 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 (MB 2013) (Contour Extension Freeze Public Notice).

3 Gray Petition at 2 and n.4.

is northeast of Anchorage; because of terrain, its over-the-air signal is limited to areas northeast of Anchorage and the antenna—which is a repurposed analog antenna the previous owner built—has a high reflective power which compromises the efficiency of its signal.⁴ In addition, the tower does not have a generator so the station goes silent when there is a power outage, and the last mile to the site is frequently accessible only by foot in the winter.⁵ Gray states that rather than remain at a remote, frequently powerless site and expend large sums on a new antenna and transmission line, it proposes to move KYES to the transmitter site of sister station KTUU and broadcast from an existing broadband antenna shared by three other stations.⁶ Gray explains that the antenna operates on channels 7 through 13 and it has determined that channel 7 is the best available channel able to replicate KYES's service area.⁷ While Gray's proposal would result in a change in coverage and loss of service to some areas, it proposes to add the KYES signal to the translator network owned by KTUU, thereby considerably reducing the loss of service to approximately 2,000 potential viewers of KYES at its present site.⁸

4. Gray further argues that a waiver of the channel substitution freeze and contour extension freeze would not undermine the underlying purpose of the freezes, which were issued in preparation of the Commission conducting a broadcast incentive auction.⁹ Gray also states that its proposal will have no impact on the subsequent repack of television stations after the incentive auction since no stations in Alaska were reassigned to a VHF channel.¹⁰ Moreover, since the proposal would allow KYES to use an existing antenna and transmitter already on-site, grant of Gray's petition would not add to the demand for new equipment or tower crews during the post-auction transition.¹¹

5. Based on Gray's showing, we believe that a waiver of the channel substitution freeze and contour extension freeze would serve the public interest and that Gray's proposal warrants consideration. Channel 7 can be substituted for channel 5 at Anchorage, Alaska as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) of the Commission's rules,¹² at coordinates 61-25-22 N. and 149-52-20 W. In addition, we find that this channel change meets the technical requirements set forth in Sections 73.616 and 73.623 of the

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.* at 4.

⁷ *Id.* at 4. Gray states that it explored purchasing a new or repurposed channel 5 antenna at an estimated cost of between \$250,000 and \$350,000, but the only vacant space on the tower is a lower, side-mount location which would result in service to fewer viewers. *Id.* at 5.

⁸ *Id.* at 4; Engineering Statement at 4 and Figure 4. We give no consideration to Gray's loss analysis based upon a proposed "correction" to the Commission's planning factors for low-VHF reception, *see* Engineering Statement at 4-7, since the Commission's rules do not provide for such a "correction."

⁹ Gray Petition at 5. The incentive auction was completed on April 13, 2017. *See Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (2017).

¹⁰ Gray Petition at 6; *see also* Engineering Statement at 7-8.

¹¹ Gray Petition at 6; Engineering Statement at 2.

¹² 47 CFR § 73.625(a).

Commission's rules.¹³ We propose to substitute channel 7 for channel 5 for station KYES-TV with the following specifications:

City and State	DTV Channel	DTV Power (kW)	Antenna HAAT (m)
Anchorage, Alaska	7	50	240

6. 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,¹⁴ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
_____	Present _____	Proposed _____
Anchorage, Alaska	5	7

7. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before [15 days after publication in the Federal Register] and reply comments on or before [25 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, SW, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Joan Stewart, Esq.
 Wiley Rein LLP
 1776 K Street, NW
 Washington, D.C. 20006

Parties must file an original and one copy of each filing.¹⁵ 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 12th Street, SW, 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

¹³ 47 CFR §§ 73.616, 73.623.

¹⁴ 47 CFR § 73.622(i).

¹⁵ 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, 1602, para. 21 (2011).

should be addressed to FCC Headquarters at 445 12th Street, SW, Washington, D.C. 20554. Alternatively, parties may submit the filing electronically at <http://apps.fcc.gov/ecfs>. Online filing is optional. Participants that file comments and replies in electronic form need only submit one copy of those comments, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments.¹⁶ All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any paper 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.¹⁷ Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

8. 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).

9. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Video Division, Media Bureau, (202) 418-1647. 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 that 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

¹⁶ 47 CFR § 1.419(d).

¹⁷ See 47 CFR § 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 Post-Transition Table of DTV 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,¹⁸ 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 CFR 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

¹⁸ *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).

shall accompany such comments and reply comments (a), (b) and (c). Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, D.C. 20554. Alternatively, parties may submit the filing electronically at <http://apps.fcc.gov/ecfs>. Online filing is optional.

5. Number of Copies. In accordance with the provisions of 47 CFR Section 1.419(b), an original and one copy of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. Participants that file comments and replies in electronic form need only submit one copy of those comments, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments (*see* 47 CFR Section 1.419(d)). An electronic copy should also be sent to 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, SW, Washington, D.C. 20554.