

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

In the Matter of	)	
	)	
	)	
Amendment of Section 73.622(i)	)	MB Docket No. 18-320
Digital Television Broadcast Stations	)	RM-11817
(Morehead and Richmond, Kentucky)	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: December 11, 2018**

**Released: December 11, 2018**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. At the request of ION Media Lexington License, Inc. (ION), licensee of digital television station WUPX-TV, channel 21, Morehead, Kentucky (WUPX), the Commission has before it an unopposed *Notice of Proposed Rulemaking (NPRM)* to amend the DTV Table of Allotments to reallocate channel 21 from Morehead, Kentucky, to Richmond, Kentucky.<sup>1</sup> ION filed comments in support of the *NPRM*.<sup>2</sup> For the reasons below, this Report and Order: (1) grants ION’s request to change WUPX’s community of license to Richmond, Kentucky; (2) amends the DTV Table of Allotments to reflect the change; (3) modifies WUPX’s license to reflect that its community of license is Richmond, Kentucky; and (4) condition any authorizations implementing this community of license change on continued service to Morehead, Kentucky.

**II. BACKGROUND**

1. On October 9, 2018, ION filed a petition for rulemaking proposing to reallocate channel 21

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<sup>1</sup> *Amendment of Section 73.622(i), Table of Allotments, Digital Television Broadcast Stations (Morehead and Richmond, Kentucky)*, Notice of Proposed Rulemaking, DA 18-1070 (rel. Oct. 18, 2018).

<sup>2</sup> Comments and Expression of Continued Interest of ION Media Lexington License, Inc. (filed Nov. 29, 2018) (ION Comments).

from Morehead to Richmond<sup>3</sup> pursuant to Section 1.420(i) of the Commission's rules.<sup>4</sup> In the Petition, ION first claimed that the proposed reallocation is mutually exclusive with WUPX's current allotment because it is based on the technical specifications currently authorized for WUPX, which ION is currently not proposing to change.<sup>5</sup> Second, ION asserted that the proposed reallocation represents a preferential arrangement of allotments under the Commission's second allotment priority by providing Richmond with its first local transmission service.<sup>6</sup> ION explained that Richmond not only qualifies as a community for allotment purposes, but also is a much larger community than Morehead and is deserving of its first local transmission service.<sup>7</sup> ION noted that Richmond (population of 31,364, compared to Morehead's population of 6,845) is the third largest city in the "Bluegrass Region" and is the county seat of Madison County, Kentucky.<sup>8</sup> ION also noted that Richmond has an active government, which "oversees municipal services such as the Richmond Fire Department, the Richmond Police Department, [the] Richmond Recycling Plant, and Richmond [u]tilities (including [w]ater, [g]as[,] and [s]anitary [s]ewer services)."<sup>9</sup> Furthermore, ION claimed that Richmond has a local newspaper service; a regional airport; two libraries; two performing arts centers; four hospital/medical centers; five museums; six radio stations; six historical sites; over 50 places of worship; several public, private, and technical/trade schools; numerous state and local parks; and is home to the Eastern Kentucky University.<sup>10</sup> Finally, ION asserted that the proposed reallocation will not deprive Morehead of its sole broadcast station as it will continue to be served by station WKMR(TV), licensed to Kentucky Authority for Educational TV, on channel \*15 at Morehead.<sup>11</sup>

2. On October 18, 2018, the Video Division issued the *NPRM*, which concluded that ION provided sufficient information to warrant further consideration of its proposal to amend the DTV Table of Allotments by deleting channel 21 at Morehead and substituting channel 21 at Richmond.<sup>12</sup> Accordingly, the Video Division sought public comment on whether the Commission should grant the proposed reallocation.<sup>13</sup>

3. On November 29, 2018, ION filed comments expressing continued support for the

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<sup>3</sup> Petition for Rulemaking of ION Media Lexington License, Inc. (filed October 9, 2017) (Petition). We note that this petition is the most recent iteration of ION's original petition filed on October 3, 2018. See LMS File No. 0000060369.

<sup>4</sup> See Petition at 1. Section 1.420(i) of the rules provides that the Commission, during a rulemaking proceeding to amend the Table of Allotments, 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. 47 CFR § 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, 4873, para. 22 (1989) (*Change in Community R&O*), recon. granted in part, 5 FCC Rcd 7094 (1990) (*Recon MO&O*). The Commission will apply this procedure in the limited circumstances where: (1) the new allotment will be mutually exclusive with a station's existing allotment; (2) the new allotment will result in a preferential arrangement of the allotments according to the Commission's television allotment priorities; and (3) the new allotment will not deprive a community of its sole local transmission outlet. *Change in Community RO&O*, 4 FCC Rcd at 4874, para. 28.

<sup>5</sup> See Petition at 1-2.

<sup>6</sup> *Id.* at 3-4.

<sup>7</sup> *Id.*

<sup>8</sup> Petition at 3, n.7.

<sup>9</sup> Petition at 3-4.

<sup>10</sup> Petition, Exhibit B.

<sup>11</sup> Petition at 4.

<sup>12</sup> *Supra* n.1, para. 4.

<sup>13</sup> *Id.*

proposed reallocation.<sup>14</sup> ION reiterated that the proposed reallocation would serve the public interest because it satisfies the Commission's second allotment priority.<sup>15</sup>

### III. DISCUSSION

4. When evaluating a proposed reallocation, the Commission compares the proposal against the existing allotment to determine whether the change would result in a preferential arrangement of allotments.<sup>16</sup> The Commission will consider any proposal to change the DTV Table of Allotments to be in the public interest if it satisfies one of the Commission's five allotment priorities.<sup>17</sup> Here, we find that the proposal represents a preferential arrangement of allotments pursuant to the Commission's second allotment priority by providing Richmond, the third largest city in Kentucky, with its first local television service. Moreover, because Morehead will not be deprived of its sole local service, we believe that grant of the proposed reallocation is in the public interest.<sup>18</sup>

### IV. ORDERING CLAUSES

5. **ACCORDINGLY, IT IS ORDERED** that the Petition for Rulemaking filed by ION Media Lexington License, Inc., licensee of WUPX-TV, Morehead, Kentucky, **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that, pursuant to the authority in Sections 154(i), 155(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended,<sup>19</sup> and Sections 0.61, 0.204(b), and 0.283 of the Commission's rules,<sup>20</sup> the DTV Table of Allotments, Section 73.622(i) of the Commission's rules, **IS AMENDED**, with respect to Morehead and Richmond, Kentucky, to read as follows:

City and State	Channel No.	
	Present	Amended
Morehead, Kentucky	*15, 21	*15
Richmond, Kentucky	-	21

7. **IT IS FURTHER ORDERED** that the authorization for station WUPX-TV **IS MODIFIED** to reflect that the station's community of license is Richmond, Kentucky.

8. **IT IS FURTHER ORDERED** that any authorization implementing this community of

<sup>14</sup> *Supra* n.2.

<sup>15</sup> ION Comments at 2.

<sup>16</sup> *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*).

<sup>17</sup> *Id.* The five allotment priorities are: (1) to provide at least one television service to all parts of the United States; (2) to provide each community with at least one television broadcast station; (3) to provide a choice of at least two television services to all parts of the United States; (4) to provide each community with at least two television broadcast stations; and (5) to 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. *Id.*

<sup>18</sup> *Recon MO&O*, 5 FCC Rcd at 7096, paras. 16-17.

<sup>19</sup> 47 U.S.C. §§ 154(i), 155(c)(1), 303(g) and (r), and 307(b).

<sup>20</sup> 47 CFR §§ 0.61, 0.204(b), and 0.283.

license change **IS CONDITIONED** upon continued service to Morehead, Kentucky.

9. **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>21</sup>

10. **IT IS FURTHER ORDERED** that this proceeding **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>21</sup> 5 U.S.C. §§ 801 *et seq.*