

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

In the Matter of)
)
)
Amendment of Section 73.622(i)) MB Docket No. 18-153
Digital Television Broadcast Stations) RM-11801
(Block Island and Newport, Rhode)
Island)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 18, 2018
Released: September 18, 2018

By the Chief, Video Division:

I. INTRODUCTION

1. At the request of ION Television License, LLC (ION), licensee of television station WPXQ-TV, channel 17, Block Island, Rhode Island (WPXQ), the Commission has before it an unopposed Notice of Proposed Rulemaking (NPRM) proposing to amend the DTV Table of Allotments to reallocate channel 17 from Block Island, Rhode Island, to Newport, Rhode Island. ION filed comments in support of, and expressing continued interest in, the proposed reallocation. For the reasons discussed below, we: (1) grant ION's request to change WPXQ's community of license to Newport, Rhode Island; (2) amend the DTV Table of Allotments to reflect the change; (3) modify WPXQ's license to reflect that its community of license is Newport, Rhode Island; and (4) condition any authorizations implementing this community of license change on continued service to Block Island.

II. BACKGROUND

2. On December 12, 2017, ION filed a petition for rulemaking proposing to reallocate channel 17 from Block Island to Newport (rulemaking petition) pursuant

1 Amendment of Section 73.622(i), Table of Allotments, Digital Television Broadcast Stations (Block Island and Newport, Rhode Island), Notice of Proposed Rulemaking, DA 18-496 (Vid. Div. 2018). The licensee recently changed its name from Ocean State Television, LLC, to ION Television License, LLC. See File No. BTCCDT-20180529ACJ.

2 ION Television License, LLC, Comments and Expression of Continued Interest (filed July 13, 2018) (Ion Comment).

3 Ocean State Television, LLC, Petition for Rulemaking, as amended (filed Dec. 12, 2017) (Petition). OST filed a supplement to its Petition on April 18, 2018. Ocean State Television, LLC, Supplement to Petition for Rulemaking (Supplement).

to Section 1.420(i) of the Commission's rules.⁴ ION stated that its proposed reallocation is based on the technical specifications currently authorized for WPXQ – meaning the new allotment will be mutually exclusive with WPXQ's existing allotment.⁵ ION also stated that the proposed reallocation will result in a preferential arrangement of allotments pursuant to the Commission's second allotment priority by providing Newport with its first local television service.⁶

3. Because Block Island will lose its first and only local service if the proposed reallocation is granted, ION also requested a waiver of the Commission's general prohibition on such removals.⁷ According to ION, a waiver is justified because there are "substantial public interest benefits" that heavily favor reallocating WPXQ to Newport.⁸ First, ION claims that Newport is a much larger community than Block Island.⁹ Specifically, ION notes that Newport has a population of 24,027¹⁰ and is located on Acquidneck Island (home to nearly 60,000 full-year residents)¹¹ – unlike Block Island, which has a population of approximately 1,000.¹² Second, ION claims that Newport, the county seat of Newport County, has a "robust local government"¹³ and "more of every type of public service and cultural indicia that the Commission generally considers in allotting local service."¹⁴ For example, ION notes that Newport, with an annual operating budget of \$125 million, has four police stations; three fire stations; a hospital; 27 places of worship; 11 museums; five performing arts centers; several colleges, including the

⁴ See Petition at 1. We note that 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.

⁵ Petition at 3.

⁶ *Id.* at 4.

⁷ *Id.* at 4-6.

⁸ Supplement at 1.

⁹ Petition at 3.

¹⁰ *Id.*; see U.S. Census Bureau; American FactFinder, Community Facts, Newport City, Rhode Island; generated by Darren Fernandez; using American FactFinder; [https://factfinder.census.gov/bkmk/cf/1.0/en/place/Newport city, Rhode Island/POPULATION/DECENNIAL_CNT](https://factfinder.census.gov/bkmk/cf/1.0/en/place/Newport%20city,%20Rhode%20Island/POPULATION/DECENNIAL_CNT).

¹¹ Supplement at 2.

¹² Petition at 4; see U.S. Census Bureau; American FactFinder, Community Facts – New Shoreham Town, Rhode Island; generated by Darren Fernandez; using American FactFinder; [https://factfinder.census.gov/bkmk/cf/1.0/en/place/New Shoreham town, Washington County, Rhode Island/POPULATION/DECENNIAL_CNT](https://factfinder.census.gov/bkmk/cf/1.0/en/place/New%20Shoreham%20town,%20Washington%20County,%20Rhode%20Island/POPULATION/DECENNIAL_CNT).

¹³ Petition at 4.

¹⁴ Supplement at 2; see also Supplement, Exhibit A (Supplement Exhibit A).

U.S. Navy War College and the Naval Undersea Warfare Center; a diverse local economy with the U.S. Navy being the largest employer (approximately 14,922 employees); and has a historical significance as it once was “one of the largest and most important colonial seaports in the British Empire before the American Revolution.”¹⁵ In comparison, ION states that Block Island, with an operating budget of \$15 million, has one police station; one volunteer fire station; one medical center; four places of worship; one museum; no performing arts centers; no colleges; and a local economy whose three largest employers employ around 100 employees each.¹⁶ Lastly, ION claims that the proposed reallocation “will cause no public harm” because Block Island will not only continue to be served by five full power commercial and one full power non-commercial television stations,¹⁷ but will also continue to receive “exactly the same over-the-air service from [WPXQ] that [it is] receiving today.”¹⁸

4. On May 14, 2018, the Video Division issued the *NPRM*, which concluded that ION provided sufficient information to warrant further consideration of: (1) its request for a waiver of the Commission’s general prohibition on the removal of a community’s first local service; and (2) its proposal to amend the DTV Table of Allotments by deleting channel 17 at Block Island and substituting channel 17 at Newport.¹⁹ Accordingly, the Video Division sought public comment on whether the Commission should grant ION’s requested waiver and grant its proposed reallocation.²⁰

5. On July 13, 2018, ION filed comments expressing continued support for the proposed reallocation.²¹ ION reiterated that the proposed reallocation would serve the public interest because it satisfies the Commission’s second allotment priority.²² ION also reiterated that a waiver of the Commission’s general prohibition on the removal of a community’s first local service is warranted.²³ ION, as it did in the rulemaking petition, stated that there are “offsetting factors” showing why removal of Block Island’s first local service is consistent with the public interest.²⁴ Furthermore, ION again stated that it did not propose any changes to WPXQ’s technical facilities.²⁵ ION also recommitted to continuing to provide service to Block Island’s viewers – noting that the over-the-air service

¹⁵ Petition at 4-6; Supplement at 2; Supplement Exhibit A.

¹⁶ Supplement Exhibit A.

¹⁷ Petition at 6.

¹⁸ Supplement at 2. The Commission considers a community “well-served” when it is served by at least five full power over-the-air signals. *See Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, 22 FCC Rcd 9478, 9493, para. 38 (2007).

¹⁹ *Supra* n. 1, para. 4.

²⁰ *Id.*

²¹ *Supra* n. 2.

²² ION Comment at 2.

²³ *Id.* at 2-3.

²⁴ *Id.*

²⁵ *Id.* at 3.

WPXQ provides to Block Island will not change.²⁶ We note that no comments were filed in support of, or in opposition to, ION's comments.

III. DISCUSSION

6. 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.²⁷ 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.²⁸ Here, we find that the proposal represents a preferential arrangement of allotments pursuant to the Commission's second allotment priority by providing Newport, the county seat of, and the largest city in, Newport County, with its first local television service. However, grant of the proposed reallocation will cause Block Island to lose its first and only local service, which the Commission generally prohibits.²⁹

7. The Commission will entertain a request to waive its general prohibition on the removal of a community's first local service in the rare circumstances where such a removal might serve the public interest - *e.g.*, providing a first reception service to a significantly sized population.³⁰ Even then, "special circumstances" must exist to warrant such a removal.³¹ After reviewing the record, we find on balance that the public would benefit from grant of a waiver of our general prohibition. First, the proposed reallocation would provide Newport, a community with a population that is approximately 24 times larger than Block Island's population, with its first local television service. Specifically, as ION noted, Newport, including Acquidneck Island where Newport is located, has a full-year population of almost 60,000 as compared to Block Island, with a population of just over 1,000. The difference in community services between Newport and Block Island also reflects the disparity in their respective permanent populations. Newport, for example, has four police stations, three fire stations, a hospital, and an annual operating budget of approximately \$125 million. In comparison, Block Island operates with an annual budget of only \$15 million, resulting in much more limited city services. Additionally, there are significant disparities in the employment and cultural opportunities between Newport and

²⁶ *Id.*

²⁷ *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*).

²⁸ *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.*

²⁹ *Recon MO&O*, 5 FCC Rcd at 7096, paras. 16-17.

³⁰ *Id.*

³¹ *See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Potts Camp and Saltillo Mississippi)*, Memorandum Opinion and Order, 16 FCC Rcd 16116, 16120, para. 8 (2001). The Commission applies the same standards for evaluating reallocation proposals for television services that it does for aural services. *See Recon MO&O*, 5 FCC Rcd at 7069, paras. 16-18.

Block Island, with Newport providing many more of each. In fact, the record supports the general conclusion that Newport is a vibrant year-round community, while Block Island may be associated with more seasonal occupancy.

8. Further, our decision in this case is influenced by the fact that Block Island will continue to be served by five full power commercial, and one full power non-commercial, television stations. Significantly, ION has committed to continue to provide the same over-the-air service from WPXQ that Block Island now receives,³² and any authorization implementing this community of license change will be conditioned upon that continued service to Block Island. Therefore, based on the unusual and specific facts of this case, we find that a waiver of the Commission’s general prohibition on removing a community’s first local service is justified because such a removal would serve the public interest.

IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that a waiver of the Commission’s general prohibition on the removal of a community’s first local service **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that the Petition for Rulemaking filed by Ocean State Television, LLC, now known as ION Television, LLC, licensee of WPXQ-TV, Block Island, Rhode Island, **IS GRANTED**.

11. **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,³³ and Sections 0.61, 0.204(b), and 0.283 of the Commission’s rules,³⁴ the DTV Table of Allotments, Section 73.622(i) of the Commission’s rules, **IS AMENDED**, with respect to Block Island and Newport, Rhode Island, to read as follows:

City and State	Channel No.	
	Present	Proposed
Block Island, Rhode Island	17	-
Newport, Rhode Island	-	17

12. **IT IS FURTHER ORDERED** that the authorization for station WPXQ-TV **IS MODIFIED** to reflect that the station’s community of license is Newport, Rhode Island.

13. **IT IS FURTHER ORDERED** that any authorization implementing

³² WPXQ currently provides a 41 dBu signal over all of Block Island, as required by Section 73.625(a)(1) of the Commission’s rules.

³³ 47 U.S.C. §§ 154(i), 155(c)(1), 303(g) and (r), and 307(b).

³⁴ 47 CFR §§ 0.61, 0.204(b), and 0.283.

this community of license change **IS CONDITIONED** upon continued service to Block Island, Rhode Island.

14. **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.³⁵

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁵ 5 U.S.C. §§ 801 *et seq.*