

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

In the Matter of
Amendment of Section 73.622(i),
Post-Transition Table of DTV Allotments,
Television Broadcast Stations
(Portland, Oregon)
MB Docket No. 20-334
RM-11864

NOTICE OF PROPOSED RULEMAKING

Adopted: October 13, 2020

Released: October 13, 2020

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 Sander Operating Co. III LLC (Sander), the licensee of KGW, channel 8 (NBC), Portland, Oregon. Sander requests the substitution of channel 26 for channel 8 at Portland in the DTV Table of Allotments. The Commission instituted a freeze on the acceptance of rulemaking petitions by full power television stations requesting channel substitutions in May 2011, and Sander asks that the Commission waive the freeze to permit KGW to change from a VHF to a UHF channel to better serve its over-the-air viewers.

2. Request for Waiver of Freeze. In support of its waiver request, Sander states that the Commission has recognized that VHF channels have certain propagation characteristics which may

1 On April 13, 2017, the Commission completed the incentive auction and broadcast television spectrum repacking authorized by the Spectrum Act. See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act); 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, GN Docket No. 12-268, Public Notice, 32 FCC Rcd 2786 (2017). The post-incentive auction transition period ended on July 13, 2020. The Media Bureau will amend the rules to reflect all new full power channel assignments in a revised Table of Allotments. Because the Table has not yet been amended, the Division will continue to refer to the Post-Transition Table of DTV Allotments, 47 CFR § 73.622(i) (2018), for the purpose of this proceeding.

2 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).

cause reception issues for some viewers.³ While Sander acknowledges that “VHF reception issues are not universal,” it states that since the 2009 digital transition, when KGW began operating exclusively on digital channel 8,⁴ “KGW has received a steady stream of complaints from viewers unable to receive the station’s over-the-air signal, despite being able to receive signals from other local stations.”⁵

3. Sander further argues that a waiver of the channel substitution freeze would not undermine the underlying purpose of the freeze, which was issued in preparation of the Commission conducting a broadcast incentive auction.⁶ Sander also states that its proposal will not impede the completion of other stations’ repacking-related construction, in that repacked stations in the Portland, Oregon Designated Market Area have all vacated their pre-auction channels.⁷ In addition, Sander has confirmed with two major equipment vendors that supplying the necessary equipment for the proposed channel 26 facility will not affect the vendors’ ability to fulfill any other station’s repacking-related order,⁸ and Sander further commits to coordinating any tower work to accommodate repacked stations in completing their work in an efficient and timely manner.⁹

4. *Request for Channel Substitution.* According to Sander, KGW’s move to channel 26 will increase the station’s interference-free population.¹⁰ While some viewers are predicted to lose service,¹¹ the staff’s analysis shows that only 417 people are predicted to live in portions of the loss

³ Sander Petition at 2-3, citing *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Notice of Proposed Rulemaking, 25 FCC Rcd 16498, 16511, para. 42 (2010) and *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Second Report and Order, 25 FCC Rcd 10732, 10750, para. 37 (2011).

⁴ For a history of the ownership of the licensee of KGW, see Sander Petition at 3, n.9.

⁵ Sander Petition at 2-3. Sander provides a sampling of complaints it has received from viewers experiencing difficulty receiving KGW’s signal. *Id.* at Exhibit A. Sander argues that over-the-air coverage is increasingly important as households choose to rely on free broadcast signals, and that over-the-air coverage is especially important in the Portland market, where many households do not subscribe to cable or satellite. Sander Petition at 4-5. Sander also states that “moving to UHF would improve the station’s future ability to offer robust ATSC 3.0 service over the air.” *Id.* at 5. Sander explains that while it has entered into a simulcasting arrangement with KPDX to offer its 3.0-formatted stream on KPDX, while maintaining ATSC 1.0 coverage on KGW’s own facilities, “[h]aving its own UHF channel would improve KGW’s future ability to offer the full benefits of ATSC 3.0 via the station’s own dedicated facilities.” *Id.*

⁶ See Sander Petition at 7-10.

⁷ *Id.* at 8. Sander further states that its proposed move to channel 26 “protects all operating and approved post-Auction facilities in accordance with the Commission’s rules.” *Id.* at 8-9.

⁸ *Id.* at Exhibit C.

⁹ Sander Petition at 9-10.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 6 and Engineering Statement at 3.

area that are not otherwise well-served.¹²

5. *Waiver Standard.* The Commission may waive a rule for good cause shown.¹³ The Commission may grant a request for waiver if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁴ Waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest. In making this determination, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁶

6. *Discussion.* Based on Sander's showing, we believe that a waiver of the channel substitution freeze would serve the public interest. Sander states that it faces specific VHF propagation challenges and has received a steady stream of complaints from viewers unable to receive the station's over-the-air signal, despite being able to receive signals from other local stations. Further, grant of the waiver will not unduly impact the purpose of the freeze as Sander points out that repacked stations in impacted areas have all vacated their pre-auction channels and the post-incentive auction transition period ended on July 3, 2020.

7. We also believe that Sander's channel substitution proposal warrants consideration. Channel 26 can be substituted for channel 8 at Portland, Oregon as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's rules,¹⁷ at coordinates 45-31-20.5 N and 122-44-49.5 W. Further, the Commission has found that population loss of less than 500 persons is *de minimis*,¹⁸ and the predicted population loss is only 417 persons who would not otherwise be well-served. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the Commission's rules.¹⁹ We propose to substitute channel 26 for channel 8 for station KGW with the following specifications:

¹² See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Notice of Proposed Rulemaking, 22 FCC Rcd 9478, 9493, para. 38 (2007) ("The Commission is generally most concerned where there is a loss of an area's only network or NCE TV service, or where the loss area results in an area becoming less than well-served, i.e., served by fewer than five full-power over-the-air signals.") (footnotes and citations omitted). Sander also notes that Class A television stations, while operating under low power technical rules, have the same primary status and public service obligations as full-power television stations and should be counted when determining if an area is well-served. Sander Petition at n.28.

¹³ 47 CFR §§ 1.3, 1.925(3).

¹⁴ 47 CFR § 1.925(3).

¹⁵ See *Northeast Cellular Tel. Co., LP v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ 47 CFR § 73.625(a).

¹⁸ See *WSET, Inc.*, 80 FCC 2d 233, 246 (1980).

¹⁹ 47 CFR §§ 73.616, 73.623.

City and State	DTV Channel	DTV Power (kW)	Antenna HAAT (m)
Portland, Oregon	26	1000	538.7

8. Accordingly, we seek comment on the proposed amendment of the Post-Transition Table of DTV Allotments, section 73.622(i) of the Commission’s rules,²⁰ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Portland, Oregon	8	26

9. Pursuant to sections 1.415 and 1.419 of the Commission’s rules,²¹ interested parties may file comments with the Commission 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. Additionally, a copy of such comments should be served on counsel petitioner, as follows:

Michael Beder, Esq.
 Associate General Counsel
 TEGNA, Inc.
 8350 Broad Street
 Suite 2000
 Tysons, Virginia 22102

Parties must file an original and one copy of each filing.²² Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, D.C. 20554. **Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (2020). During the time the Commission’s building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional**

²⁰ 47 CFR § 73.622(i).

²¹ 47 CFR §§ 1.415, 1.419.

²² 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).

copies for each additional docket or rulemaking number; an original and one copy are sufficient.

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.²³ 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.²⁴ Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

10. 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).

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

12. In view of the forgoing, the Petition for Rulemaking filed by Sander Operating Co. III, LLC, licensee of KGW, Portland, Oregon, requesting that the Commission waive its current freeze on the filing of digital channel substitution rulemaking proceedings and commence a proceeding to amend the rules to allot channel 26 to KGW at Portland, Oregon in lieu of channel 8 IS HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman

²³ 47 CFR § 1.419(d).

²⁴ See 47 CFR § 1.7.

Chief, Video Division
Media Bureau

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 CFR 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,²⁵ we will not consider counterproposals which propose new allotments.

(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.

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 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 St., Washington,

²⁵ *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).

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 to 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 Files. All filings will be available at <http://apps.fcc.gov/ecfs/> by searching the docket number of this proceeding.