

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

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|---|---|---------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.622(i) |) | MB Docket No. 21-60 |
| Post-Transition Table of DTV Allotments |) | RM-11884 |
| Television Broadcast Stations |) | |
| (Superior and York, Nebraska) |) | |

NOTICE OF PROPOSED RULEMAKING

Adopted: February 22, 2021

Released: February 22, 2021

Comment Date: [30 days after date of publication in the Federal Register]

Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division (Division) has before it a petition for rulemaking filed by Gray Television Licensee, LLC (Gray or Licensee), the licensee of KSNB-TV, channel 4 (NBC/MyNetwork), Superior, Nebraska.¹ Gray requests that the Commission (1) delete channel 4 from Superior and allot it to York, Nebraska, in the DTV Table of Allotments² and (2) substitute channel 24 for channel 4 at York in the Table consistent with the technical parameters set forth in the Amended Petition. The Media Bureau (Bureau) previously instituted a freeze on the acceptance of rulemaking petitions by full power television stations requesting channel substitutions,³ and continued a freeze on rulemaking petitions for changes of community of license that required a change in technical facilities.⁴ Gray asks that the Commission waive these freezes to permit KSNB-TV to change from a VHF to a UHF channel and to move KSNB-TV's facilities to a different tower in order to better serve its over-the-air viewers.⁵ Because the Bureau has since

¹ Gray Television Licensee, LLC Petition for Rulemaking (filed July 28, 2020), LMS File No. 0000118815. Gray amended its Petition on October 13, 2020 to reduce the proposed tower height for KSNB-TV (Amended Petition).

² 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.

³ Public Notice, *Freeze on the Filing of Petitions for Digital Channel Substitutions, Effective Immediately*, 26 FCC Rcd 7721 (MB 2011).

⁴ Public Notice, *Media Bureau Partially Lifts Freeze on Filing Petitions for Rulemaking to Change Full Power Stations' Community of License*, 33 FCC Rcd 151 (MB 2018) (partially lifting freeze on the filing for community of license changes that do not require or involve changes in a station's technical facilities).

⁵ Amended Petition at 2, n.2.

lifted these freezes,⁶ we do not need to consider waiving them in connection with Gray's rulemaking petition. As discussed below, however, because Gray's proposal that the Division allot channel 24 to York is not mutually exclusive with its existing channel 4 allotment at Superior, and would result in removal of Superior's sole local transmission outlet, we must consider a waiver of section 1.420(i) of the Commission's rules and allotment policies. We seek comment on our proposals to grant such waivers and adopt Gray's proposed changes to the DTV Table of Allotments.⁷

II. BACKGROUND

2. In addition to KSNB-TV, Gray is the licensee of KOLN (CBS/NBC), Lincoln, Nebraska, and states that its rulemaking petition "is part of a coordinated effort by Gray to improve service to viewers in the Lincoln & Hastings-Kearney designated market area . . ."⁸ The collapse of KOLN's 1,500-foot tower during an ice storm in 2020 necessitated rebuilding KOLN's technical facilities,⁹ and according to Gray, given "the imminent failure of KSNB's existing technical facility,"¹⁰ rebuilding KSNB-TV on channel 24 at the new KOLN tower will not only resolve VHF-related reception issues in certain areas of KSNB-TV's current predicted service area, but will also save several hundred thousand dollars in construction costs.¹¹

3. *Proposed Change of Community of License.* A change in community of license for KSNB-TV is necessary because Gray's proposed operation on channel 24 at the authorized KOLN tower (a relocation of 23.5 km) cannot provide the required 48 dBu principal city signal to Superior.¹² Gray states that York (population 7,869), the county seat of York County, qualifies as a community for allotment purposes.¹³ York currently has no local television allotment, and as the largest community in York County, is the hub of economic activity for the area.¹⁴ According to Gray, almost 70 percent of York residents work in York and businesses include an ethanol plant, an aerospace component manufacturer, and companies which trade both domestically and internationally.¹⁵ Gray further states that York is known as an area educational center, as the home of York College, three large public schools, three parochial grade schools, and two alternative programs for youth and developmentally challenged

⁶ See *Media Bureau Lifts Freeze on the Filing of Television Station Minor Modification Applications and Rulemaking Petitions Effective Fifteen Days After Publication in the Federal Register*, Public Notice, DA 20-1269 (rel. Oct. 29, 2020). This action was effective on November 27, 2020. See 85 FR 73706 (Nov. 19, 2020).

⁷ See *infra* paras. 7-12.

⁸ Amended Petition at 2-3.

⁹ Amended Petition at 3, 4; see also LMS File No. 000011857 (granted Nov. 27, 2020).

¹⁰ Amended Petition at 3. Gray explains that it acquired the Superior station pursuant to a failing station waiver in 2013, that the station had been silent for extended periods before Gray's acquisition, and that the "former owner had very limited resources" and constructed the station's channel 4 digital facilities "with older, repurposed equipment that never worked as well as predicted using the FCC's standard contour prediction methodologies." *Id.*

¹¹ *Id.* at 4-5; see also Engineering Exhibit at 2. Gray further states that although it discovered after acquiring KSNB-TV in 2013 that the station's digital facilities were "grossly inadequate," it could not pursue any meaningful upgrades because of various broadcast freezes then in effect, and that "in recent years, Gray's engineering resources have been devoted fully to the [incentive auction] repack." Amended Petition at 3.

¹² Amended Petition, Engineering Exhibit at 3; 47 CFR § 73.625(a).

¹³ Amended Petition at 6-7. See also *Beacon Broadcasting*, 2 FCC Red 3469 (1987), *recon. denied*, 2 FCC Rcd 7562 (1987) (outlining the test for community status under section 307(b) of the Communications Act of 1934, as amended).

¹⁴ Amended Petition at 6.

¹⁵ *Id.* at 6-7.

individuals. York also has a panoply of health care facilities.¹⁶ Finally, York has a fully autonomous municipal government with a mayor, city council, and professional police, fire, and parks departments.¹⁷

4. Gray asserts that its proposed change of community of license represents a preferential arrangement of allotments under the Commission's second allotment priority because it will result in a first local television station for York.¹⁸ While Superior would lose its only local television station, Gray states that York is more deserving of an allotment. According to Gray, Superior has a population of just 1,929 and given its small size, offers only limited community services compared to those offered in York.¹⁹ In addition, Superior is served by a school district that covers a 262 square mile area of Nuckolls, Webster, and Thayer counties with a single elementary school and a combined middle/high school. Further, unlike in York, only 31.5 percent of Superior's residents work in Superior, which has limited employment opportunities.²⁰

5. *Proposed Channel Substitution.* Gray states the public interest would be served by substituting channel 24 for channel 4. According to Gray, problems with digital low-band VHF reception by stations in many markets has been widely publicized since the 2009 digital transition date,²¹ and since acquiring KSNB-TV, Gray has determined that many viewers experience significant difficulty in receiving the station's signal. As noted by Gray "[a]lthough the FCC's low VHF propagation models predict that viewers can receive a 28 dBu signal from KSNB well west of Hastings and east of Nebraska City, in practice viewers in Superior and other locations within KSNB's predicted contour are unable to receive a reliable over-the-air signal, particularly when using indoor antennas."²² As a result, Gray concludes that by moving from channel 4 to channel 24 will enable KSNB "to deliver a more reliable over-the-air signal to viewers throughout its coverage area."²³

6. Gray's proposal to change channel and relocate to the KOLN tower would result in some predicted loss of service to 8,920 persons, including a loss of first television service to 14 persons and second television service to 523 persons.²⁴ According to Gray, however, taking into account both KSNB-TV's proposal and KOLN's authorized expanded contours, most of the loss area will continue to receive four or more television services, and there will be an overall gain of 202,654 persons, including a first local service for 150 persons, an additional second service to 4,816 persons, and an additional third service to 5,860 persons.²⁵

III. DISCUSSION

7. 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

¹⁶ *Id.*

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 11-13; *see infra* para. 8.

¹⁹ Amended Petition at 12-13.

²⁰ *Id.* at 12.

²¹ Amended Petition, Engineering Exhibit at 2.

²² Amended Petition at 15.

²³ *Id.*

²⁴ *Id.* at 16; Engineering Exhibit at 3.

²⁵ Amended Petition at 16; *see also* Amended Petition, Engineering Exhibit at 3-5 and Figures 2, 3. Gray also states that "[b]ecause so few viewers are able to receive KSNB with an over-the-air antenna, Gray has been broadcasting KSNB's programming on multicast channels for KOLN and satellite stations KGIN [CBS/NBC, Grand Island, Nebraska] and KNHL [MyNetwork/NBC/CW, Hastings, Nebraska]." Amended Petition at n.7.

interest.²⁶ The Commission will apply this procedure in the limited circumstances in which: (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.²⁷ Generally, the Commission believes that its prohibition on the removal of a community's first local service is justified because such removal is presumptively inconsistent with the public interest.²⁸ The Commission, however, will entertain a request to waive its general prohibition on the removal of a community's sole first local service in the rare circumstance where such a removal might serve the public interest, for example, providing a first reception service to a significantly sized population.²⁹

8. The Commission determines a preferential arrangement of allotments based on the following five priorities: (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.³⁰

9. Gray does not dispute that its proposal would remove the sole local transmission outlet, and thus requires a waiver of the Commission's policy that doing so is *prima facie* inconsistent with the public interest. We also conclude that we must consider a waiver of section 1.420(i) of the Commission's rules and allotment policies, which provide that the Commission may modify a station's community of license, without affording competing expressions of interest, where the amended allotment would be mutually exclusive with the licensee's present allotment. We disagree with Gray's assertion that the channel 24 proposal set forth in its Amended Petition complies with section 1.420(i) because KSNB-TV currently provides principal community coverage to York with channel 4.³¹ Because KSNB-TV could continue to operate on channel 4 at Superior, and another full power facility could be operated on channel 24 pursuant to the technical parameters set forth in the Amended Petition, the channel 24 proposal is not mutually exclusive with the present channel 4 allotment. We also disagree that section 1.420(i) does not apply to changes in the DTV Table of Allotments because it only refers to the now obsolete analog Table of Allotments that was contained in section 73.606 of the rules.³² Section 73.606 specifically references the Post-Transition Table of DTV allotments in section 73.622(i) of the rules, and as Gray admits, the Division has consistently applied section 1.420 when amending the DTV Table.³³

10. *Waiver Standard.* The Commission may waive a rule for good cause shown.³⁴ 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,

²⁶ 47 CFR § 1.420(i); *Modification of FM and TV Authorizations to Specify a New Community of License*, MM Docket No. 88-526, 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*).

²⁷ *Change in Community RO&O*, 4 FCC Rcd at 4874, para. 28.

²⁸ *Recon MO&O*, 5 FCC Rcd at 7096, para. 17.

²⁹ *Id.*

³⁰ *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*).

³¹ See Amended Petition at 7.

³² See *id.* at nn.10 & 15.

³³ *Id.* at n.10.

³⁴ 47 CFR § 1.3.

application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.³⁵ 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.³⁶ Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.³⁷

11. *Mutual Exclusivity Requirement.* As Gray explains, the Commission adopted section 1.420 in 1989 to provide a procedure whereby a television station could request a new community of license in a rulemaking petition to amend the television table of allotments without subjecting the station to the risk of losing its license to competing applications.³⁸ Because the Commission did not, however, wish to preclude future applicants from having an opportunity to apply for a new station to serve the area, it adopted the mutual exclusivity requirement – that a proposed change in community of license must be mutually exclusive with the station’s current allotment in order to be shielded from competing expressions of interest - so only petitions that did not “deprive potential [future] applicants of opportunities” would be accepted.³⁹ In this case, Gray has demonstrated that if we grant a waiver and adopt its proposed amendments to the DTV Table of Allotments, multiple channels are potentially available for future allotment in and around Superior.⁴⁰ Thus, because the underlying purpose of the rule would not be frustrated by the instant rulemaking petition to change KSNB-TV’s community of license without allowing competing expressions of interest, we propose to waive this requirement of section 1.420(i). We seek comment on this proposal.

12. *Removal of Sole Local Service From Superior.* We also propose to waive the Commission’s policy disfavoring the removal of a sole local service allotted to a community. As Gray has demonstrated, York is a larger community than Superior, and grant of a waiver to allow KSNB-TV to collocate with KOLN would result in the provision of first, second, and third television service to a substantial number of persons. Moreover, other important public interest benefits would accrue by permitting KSNB-TV to change its channel and community, and collocate with KOLN, including operational and economic efficiencies and resolving low VHF reception problems for KSNB-TV. Finally, Gray has demonstrated that there are a number of channels that may be allotted in the area if an interested party wishes to pursue acquiring a construction permit for a new station in the area. We seek comment on this proposal.

13. Accordingly, we believe that Gray’s proposal warrants consideration and seek comment on whether Gray has provided sufficient evidence indicating that its proposal to amend the DTV Table of Allotments in section 73.622(i) of the rules to modify the Station’s community of license from Superior,

³⁵ *Id.*

³⁶ *See Northeast Cellular Tel. Co., LP v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990).

³⁷ *Id.* at 1166. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *NetworkIP v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

³⁸ Amended Petition at 8-9, citing *Change in Community R&O* at 4870, para. 1.

³⁹ Amended Petition at 9, citing *Change in Community R&O*, 4 FCC Rcd at 4872-73, paras. 22, 24. The Commission went on to state that this approach with regards to mutually exclusivity is not precluded by the *Ashbacker* doctrine, which does not mandate mutual exclusivity. Amended Petition at 9, citing *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945) and *Change in Community R&O*, 4 FCC Rcd at 4873, para. 23. Thus, Gray contends that “mutual exclusivity is not a statutory requirement or other unwaivable obligation.” Amended Petition at 9.

⁴⁰ Amended Petition, Engineering Exhibit (showing channels potentially available for allotment at Superior (Table 2 – five VHF and 13 UHF), York (Table 3 – four VHF and 10 UHF), and Lincoln, Nebraska (Table 4 – four VHF and five UHF)).

Nebraska, to York, Nebraska, as listed below, is consistent with the public interest.⁴¹ We find that channel 24 can be allotted to York, Nebraska, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the rules⁴² at coordinates 40-48-11.0 N and 97-10-53.0 W.

| City and State | Channel No. | |
|--------------------|-------------|----------|
| | Present | Proposed |
| Superior, Nebraska | 4 | - |
| York, Nebraska | - | 24 |

14. Furthermore, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules.⁴³ We propose to substitute channel 24 for channel 4 for KSNB-TV with the following specifications and seek comment on this proposal:

| <u>City and State</u> | <u>DTV Channel</u> | <u>DTV Power (kW)</u> | <u>Antenna HAAT (m)</u> |
|-----------------------|--------------------|-----------------------|-------------------------|
| York, Nebraska | 24 | 260 | 430 |

IV. PROCEDURAL MATTERS

15. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (*NPRM*). Petitioner or any proponent that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly.⁴⁴ Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the rules.⁴⁵

16. *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.⁴⁶
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.⁴⁷

17. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,⁴⁸ interested parties may file comments and reply comments on or before the dates indicated on the

⁴¹ See *supra* note 2.

⁴² 47 CFR § 73.625(a).

⁴³ 47 CFR §§ 73.616, 73.623.

⁴⁴ See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, Report and Order, MB Dock No. 07-729, FCC Red 8192, 8194, para. 9 (Aud. Div. 2009).

⁴⁵ 47 CFR § 1.420(j).

⁴⁶ 47 CFR § 1.420(d).

⁴⁷ 47 CFR § 1.420(g)(2).

⁴⁸ 47 CFR §§ 1.415, 1.419, and 1.420.

first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁴⁹

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. 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. 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. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.
 - 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.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 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-19.⁵⁰
 - 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 copies for each additional docket or rulemaking number; an original and one copy are sufficient.

18. *Service.* Pursuant section 1.420 of the rules,⁵¹ 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.⁵² Additionally, a copy of such comments should be served on counsel for Petitioner, as follows:

Joan Stewart, Esq.
Wiley Rein LLP
1776 Street NW
Washington, DC 20006

19. *Ex Parte Notices– Restricted.* The proceeding this *NPRM* initiates shall be treated as a “restricted” proceeding in accordance with the Commission's *ex parte* rules.⁵³ 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

⁴⁹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

⁵⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

⁵¹ 47 CFR § 1.420.

⁵² See 47 CFR § 1.420(a), (b) and (c).

⁵³ 47 CFR §§ 1.1200 *et seq.*

reconsideration by the Commission or review by any court.⁵⁴ 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.⁵⁵ 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.⁵⁶ 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.

20. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection via ECFS (<http://apps.fcc.gov/ecfs/>). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

21. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,⁵⁷ do not apply to a rulemaking proceeding to amend the DTV Table of Allotments, section 73.622(i) of the rules.⁵⁸ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.⁵⁹ 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 2002.⁶⁰

22. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

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

V. ORDERING CLAUSES

24. **IT IS ORDERED** that, 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, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b), and sections 0.61, 0.204(b), and 0.283 of the rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS PROPOSED TO GRANT WAIVERS OF THE COMMISSION’S RULES AND POLICIES TO AMEND** the Post-Transition Table of DTV Allotments, section 73.622(i) of the rules, 47 CFR § 73.622(i), as set forth in this *NPRM*, and this *NPRM IS ADOPTED*.

⁵⁴ 47 CFR § 1.1208.

⁵⁵ 47 CFR § 1.1204(a)(10).

⁵⁶ 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

⁵⁷ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

⁵⁸ 47 CFR § 73.622(i).

⁵⁹ See 44 U.S.C. §§ 3501-3520.

⁶⁰ See 44 U.S.C. § 3506(c)(4).

25. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415, 1.419, 1.420 of the rules, 47 CFR §§ 1.415, 1.419, and 1.420, interested parties may file comments, including counterproposals, on the *NPRM* in MB Docket No. 21-60 and RM-11884 on or before thirty (30) days after publication in the Federal Register and reply comments on or before forty five (45) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau