

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

In the Matter of )
)
Amendment of Section 73.622(i), Post-Transition ) MB Docket No. 21-127
Table of DTV Allotments, Television Broadcast ) RM-11894
Stations (Schenectady, New York) )

NOTICE OF PROPOSED RULEMAKING

Adopted: April 5, 2021

Released: April 5, 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, Media Bureau has before it a petition for rulemaking filed November 27, 2020 by WRGB Licensee, LLC (Petitioner), the licensee of WRGB (CBS), channel 6, Schenectady, New York.1 The Petitioner requests the substitution of channel 35 for channel 6 at Schenectady, New York in the DTV Table of Allotments.2

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, and also that the reception of VHF signals require larger antennas that "are generally not well suited to the mobile applications expected under flexible use, relative to UHF

1 Petition of WRGB Licensee, LLC for Rulemaking (filed Nov. 27, 2020), LMS File No. 0000127670 (Petition). The Petitioner amended its Petition on February 24, 2021 (Amended Engineering Statement), to provide a comparison of the proposed channel 35 facility with WRGB's original post-DTV transition channel 6 facility (File No. BPCDT-20080307AAK).

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 Red 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.

channels.”<sup>3</sup> According to the Petitioner, WRGB has received numerous complaints from viewers unable to receive over-the-air signal, despite being able to receive signals from other station.”<sup>4</sup>

3. In addition, the Petitioner states that while the proposed channel 35 noise limited contour does not completely encompass the relevant channel 6 noise limited contour,<sup>5</sup> WRGB is a CBS affiliate and there are three other CBS affiliated stations that serve some portion of the loss area. In addition, the Petitioner submitted an analysis, using the Commission’s *TVStudy* software analysis program, demonstrating that after taking into account service provided by other CBS stations, all of the population located within WRGB’s original post-DTV transition channel 6 noise limited contour will continue to receive CBS service, except for 30 people.<sup>6</sup>

### III. DISCUSSION

4. We believe that the Petitioner’s channel substitution proposal warrants consideration. Channel 35 can be substituted for channel 6 at Schenectady, New York, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission’s rules (rules),<sup>7</sup> at coordinates 42-37-31.3 N and 74-00-36.7 W. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules.<sup>8</sup> Although the Petitioner’s proposal would result in a loss of CBS service to approximately 30 people, we find such a loss to be *de minimis*.<sup>9</sup> Thus, we propose to substitute channel 35 for channel 6 for WRGB with the following specifications:

<u>City and State</u>	<u>DTV Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Schenectady, New York	35	1000	392

<sup>3</sup> Petition at 2, 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). See also Petition at 3 (regarding dipole antenna lengths needed to receive VHF and UHF signals on mobile devices using ATSC 3.0 technology) and Engineering Statement at 2-4 (addressing reception difficulties inherent in broadcast on low VHF channels 2 through 6). The Petitioner’s engineering consultant also opines that WRGB will likely be precluded from using ATSC 3.0 technology on channel 6 to deliver television service to portable and mobile users of these services. Engineering Statement at 4.

<sup>4</sup> Petition at 2; see also Amended Engineering Statement at 2 (despite operating at higher power pursuant to waiver of section 73.622(f) of the rules, the station still struggles with the propagation and reception problems, and viewer complaints, operating on channel 6).

<sup>5</sup> Amended Engineering Exhibit at 6. After transitioning to its post-transition digital channel 6 facility (File No. BPCDT-20080307AAK), WRGB subsequently was granted an experimental authorization and then a waiver of section 73.622(f) of the Commission’s rules, 47 CFR § 73.622(f), in conjunction with WPVI-TV, channel 6, Philadelphia, Pennsylvania, to permanently increase power to 30.2 kW (File No. BPCDT-20090622ABV). This modification to WRGB’s pre-transition facility, however, was intended solely to improve reception to existing viewers of digital channel 6 when WRGB ceased analog operations. See Engineering Statement at 2-3 and Amended Engineering Statement at 1-3, 6; see also Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to ABC, Inc. and Freedom Broadcasting of New York Licensee, LLC, File Nos. No. BPCDT-20090617AD and BEDSTA-20100728AAE (Mar. 16, 2011) (concluding that because testing conducted by the stations and the Commission indicated that the power increases significantly resolved the channel 6 stations’ viewers’ reception issues, a waiver of section 73.622(f) of the rules was in the public interest). Accordingly, the Bureau has used the technical parameters of WRGB’s original post-transition digital channel 6 facility (see File No. BPCDT-20080307AAK) in determining any predicted loss which may occur from the proposed channel substitution.

<sup>6</sup> Amended Engineering Statement at 6.

<sup>7</sup> 47 CFR § 73.625(a).

<sup>8</sup> 47 CFR §§ 73.616, 73.623.

<sup>9</sup> See *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that population loss of less than 500 persons is *de minimis*). See also Amended Engineering Statement at 6 and Exhibits.

5. Accordingly, we seek comment on the proposed amendment of the Post-Transition Table of DTV Allotments, section 73.622(i) of the rules,<sup>10</sup> for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Schenectady, New York	6, *34, 43	*34, 35, 43

#### IV. PROCEDURAL MATTERS

6. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (*NPRM*). The 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.<sup>11</sup> 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.<sup>12</sup>

7. *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.<sup>13</sup>
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.<sup>14</sup>

8. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,<sup>15</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>16</sup>

- **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

<sup>10</sup> 47 CFR § 73.622(i).

<sup>11</sup> See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, Report and Order, MB Docket No. 07-729, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

<sup>12</sup> 47 CFR § 1.420(j).

<sup>13</sup> 47 CFR § 1.420(d).

<sup>14</sup> 47 CFR § 1.420(g)(2).

<sup>15</sup> 47 CFR §§ 1.415, 1.419, and 1.420.

<sup>16</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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, 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.<sup>17</sup>
- 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.

9. *Service.* Pursuant section 1.420 of the rules,<sup>18</sup> 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.<sup>19</sup> Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Paul A. Cicelski, Esq.  
Lerman Senter PLLC  
2001 L Street, NW  
Washington, D.C. 20036

10. *Ex Parte Notices– Restricted.* The proceeding this Notice initiates shall be treated as a “restricted” proceeding in accordance with the Commission’s *ex parte* rules.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> Any comment that has not been served on the petitioner constitutes an *ex parte*

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<sup>17</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

<sup>18</sup> 47 CFR § 1.420.

<sup>19</sup> See 47 CFR § 1.420(a), (b) and (c).

<sup>20</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>21</sup> 47 CFR § 1.1208.

<sup>22</sup> 47 CFR § 1.1204(a)(10).

<sup>23</sup> 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

(continued....)

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.

11. *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.

12. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,<sup>24</sup> do not apply to a rulemaking proceeding to amend the DTV Table of Allotments, section 73.622(i) of the rules.<sup>25</sup> This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.<sup>26</sup> 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.<sup>27</sup>

13. *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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

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

#### V. ORDERING CLAUSES

15. **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 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**.

16. **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. 21-127 and RM-11894 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

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opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

<sup>24</sup> 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).

<sup>25</sup> 47 CFR § 73.622(i).

<sup>26</sup> See 44 U.S.C. §§ 3501-3520.

<sup>27</sup> See 44 U.S.C. § 3506(c)(4).