

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

In the Matter of	)	
	)	
Amendment of Section 73.622(i), Post-Transition	)	MB Docket No. 21-248
Table of DTV Allotments, Television Broadcast	)	RM-11910
Stations (Staunton, Virginia)	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: June 15, 2021**

**Released: June 15, 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 (Bureau), has before it a petition for rulemaking filed May 27, 2021, by VPM Media Corporation (Petitioner), the licensee of noncommercial educational television station WVPT, channel \*11 (PBS), Staunton, Virginia.<sup>1</sup> The Petitioner requests the substitution of channel \*15 for channel \*11 at Staunton, Virginia, in the DTV Table of Allotments.<sup>2</sup>

**II. BACKGROUND**

2. In support of its channel substitution request, the Petitioner states that the proposed channel substitution will serve the public interest in two ways. First, it would resolve significant over-the-air reception problems in the WVPT service area.<sup>3</sup> The Petitioner states that the challenges of digital reception are well-documented, and that the Commission has recognized the deleterious effects of manmade noise on the reception of digital VHF signals, including VHF channel propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and

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<sup>1</sup> Petition of VPM Media Corporation for Rulemaking (filed May 27, 2021), LMS File No. 0000149712 (Petition). The Petitioner amended its Petition on June 4, 2021 (Amended Engineering Statement) at the staff's request to provide additional information regarding predicted loss areas.

<sup>2</sup> 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, and the Bureau will amend the rules to reflect all new full power channel assignments in a revised Table of Allotments. WVPT was repacked to channel \*12 and has not yet constructed or licensed that facility. See Petition at 4 and n.2. Accordingly, for the purpose of this proceeding we will refer to the Petitioner's licensed channel \*11 facility. We also note that pursuant to the incentive auction bidding process, WVPT is sharing its facility with noncommercial educational station WVPY, Front Royal, Virginia, which relinquished its channel. See LMS File No. 0000055362. Because the two stations are commonly owned, the Petitioner is not required to provide the separate consent of WVPY to the proposed channel change.

<sup>3</sup> Petition at 2.

nearby electrical devices to cause interference.<sup>4</sup> The Petitioner states that WVPT routinely receives calls from viewers with reception issues based on its VHF channel.<sup>5</sup> Secondly, the Petitioner believes that the channel substitution will allow for more efficient construction of WVPT's post-incentive auction facilities. The Petitioner explains that it initially planned to retune WVPT's existing Distributed Transmission System (DTS) transmitters from channel \*11 to channel \*12. The transmitter manufacturer, however, declared bankruptcy, and that manufacturer, as well as the antenna manufacturer, were unable to support the planned retuning effort.<sup>6</sup> Meanwhile, a structural analysis of WVPT's existing tower revealed that it could not support a replacement antenna on VHF channel 12. According to the Petitioner, the tower can support a lighter weight UHF antenna, and thus, allowing WVPT to move to channel \*15 will obviate the need to construct a new tower, saving both time and money.<sup>7</sup>

3. The Engineering Statement provided with the Petition states that WVPT has experienced a substantial loss of viewers in its service area due to the propagation characteristics of its VHF digital channel, exacerbated by rugged terrain.<sup>8</sup> It further states that the proposed channel \*15 facility will result in a net gain of 56,814 people.<sup>9</sup> While there is a loss area of 27,033 people, the Petitioner asserts that most of the loss area is in the southwest portion of WVPT's service area, where seven to ten television services will remain, including service from noncommercial educational station WBRA-TV (PBS),<sup>10</sup> and that the only areas that will receive fewer than five full power television services did not receive a terrain-limited signal from WVPT on channel \*11.<sup>11</sup> In its Amended Engineering Statement, the Petitioner's engineering consultant clarified that only seven people would lose their only PBS noncommercial educational service.<sup>12</sup>

### III. DISCUSSION

4. We believe that the Petitioner's channel substitution proposal warrants consideration. Channel \*15 can be substituted for channel \*11 at Staunton, Virginia, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's rules (rules),<sup>13</sup> at

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<sup>4</sup> *Id.* 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, paras. 42, 44 (2010).

<sup>5</sup> Petition at 3. These include viewers with antenna systems that can receive the UHF signals in the market, but not VHF signals, and interference from devices that use electricity, including LED and CF lighting, motors, and kitchen appliances. *Id.* at 3-4. The Petitioner also states that when there is lightning activity in the area, WVPT's VHF signal can be unwatchable for hours at a time. *Id.* at 4.

<sup>6</sup> *Id.* at 4. The Station's construction permit currently expires on June 28, 2021. It has requested tolling of its post-auction construction permit through December 2021. See Petitioner's Request for Tolling Waiver, LMS File No. 0000129932.

<sup>7</sup> Petition at 4-5.

<sup>8</sup> Engineering Statement at 1.

<sup>9</sup> *Id.*

<sup>10</sup> In this regard, the Petitioner cites to the *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, 9493-94, 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.").

<sup>11</sup> Petition at 5-6; Engineering Statement at 1-2. The Petition also maintains that any losses resulting from the channel substitution are offset by WVPT's increased coverage to the north, providing a second, third, fourth, and fifth service, and a first noncommercial educational service, to a number of viewers. Petition at 6; Engineering Statement at Exhibit 4.

<sup>12</sup> Amended Engineering Statement at 2.

<sup>13</sup> 47 CFR § 73.625(a).

coordinates 38-09-54.4 N and 79-18-50.1 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>14</sup> While the Petitioner's proposal would result in the loss of noncommercial educational television service (PBS) to seven people, the Commission considers that number to be *de minimis*.<sup>15</sup>

5. We propose to substitute channel \*15 for channel \*11 for WVPT with the following specifications:<sup>16</sup>

<u>City and State</u>	<u>DTV Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Staunton, Virginia	*15	263	689

6. Accordingly, we seek comment on the proposed amendment of the Post-Transition Table of DTV Allotments, section 73.622(i) of the rules,<sup>17</sup> for the community listed below, to read as follows:<sup>18</sup>

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Staunton, Virginia	*11	*15

#### IV. PROCEDURAL MATTERS

7. *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>19</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>20</sup>

8. *Cut-off Protection.* The following procedures will govern the consideration of the filings in this proceeding:

<sup>14</sup> 47 CFR §§ 73.616, 73.623.

<sup>15</sup> See *WSET, Inc.*, 80 FCC Rcd 233, 246 (1980) (finding loss area population of 500 people to be *de minimis*).

<sup>16</sup> WVPT is located within the National Radio Quiet Zone, an area of approximately 13,000 square miles which was created to minimize possible harmful interference at the National Radio Astronomy Observation (NRAO) site located at Green Bank, West Virginia, and the Naval Radio Research Observatory site at Sugar Grove, West Virginia. Section 1.924(a) of the Commission's rules, 47 CFR § 1.924(a), requires that the NRAO be notified, in writing, of any proposed construction and operation of a new or modified station at a permanent fixed location in the Quiet Zone, including the technical details of the proposed operation. 47 CFR § 1.924(a)(1). Since WVPT is located within the Quiet Zone, the Petitioner is required to comply with all pertinent sections of 47 CFR § 1.924 with regard to modification of WVPT's facilities, such as a change in channel. Petitioner states that it has designed its proposed channel \*15 facility with a deep null to the west to protect the Green Bank Observatory site. Engineering Statement at 1.

<sup>17</sup> 47 CFR § 73.622(i).

<sup>18</sup> See *supra* n.2.

<sup>19</sup> See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

<sup>20</sup> 47 CFR § 1.420(j).

- (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>21</sup>
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.<sup>22</sup>

9. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,<sup>23</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>24</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 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>25</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.

10. *Service.* Pursuant to section 1.420 of the rules,<sup>26</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

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<sup>21</sup> 47 CFR § 1.420(d).

<sup>22</sup> 47 CFR § 1.420(g)(2).

<sup>23</sup> 47 CFR §§ 1.415, 1.419, and 1.420.

<sup>24</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

<sup>25</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

<sup>26</sup> 47 CFR § 1.420.

directed. A certificate of service shall accompany such comments and reply comments.<sup>27</sup> Additionally, a copy of such comments should be served on counsel for the Petitioner, as follows:

Ari Meltzer, Esq.  
Wiley Rein LLP  
1776 K Street, NW  
Washington, D.C. 20006

11. *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>28</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>29</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>30</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>31</sup> 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. *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.

13. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,<sup>32</sup> do not apply to a rulemaking proceeding to amend the DTV Table of Allotments, section 73.622(i) of the rules.<sup>33</sup> This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.<sup>34</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>35</sup>

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<sup>27</sup> See 47 CFR § 1.420(a), (b) and (c).

<sup>28</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>29</sup> 47 CFR § 1.1208.

<sup>30</sup> 47 CFR § 1.1204(a)(10).

<sup>31</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 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>32</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>33</sup> 47 CFR § 73.622(i).

<sup>34</sup> See 44 U.S.C. §§ 3501-3520.

<sup>35</sup> See 44 U.S.C. § 3506(c)(4).

14. *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).

15. *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

16. **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*.

17. **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. 21-248 and RM-11910 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