

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

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

REPORT AND ORDER

(Proceeding Terminated)

Adopted: June 16, 2021

Released: June 16, 2021

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking¹ issued in response to a Petition for Rulemaking filed by WRGB Licensee, LLC (Petitioner), the licensee of WRGB (CBS), channel 6, Schenectady, New York. The Petitioner has requested the substitution of UHF channel 35 for VHF channel 6 in the DTV Table of Allotments.²

2. The Petitioner filed comments in support of the petition, as required by the Commission's rules,³ reaffirming its commitment to apply for channel 35.⁴ REC Network (REC), which states it is an advocate for Low Power FM (LPFM) stations, as well as noncommercial educational (NCE) and small "mom and pop" commercial stations, also filed comments supporting the proposed channel substitution.⁵

3. We believe the public interest would be served by substituting channel 35 for channel 6 at Schenectady, New York. The Petitioner states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers.⁶ In addition, according to the Petitioner, WRGB has received numerous complaints from viewers unable to receive the Station's over-the-air signal, despite being able to receive signals from other stations.⁷ While the proposed channel 35 noise limited contour does not completely encompass the relevant channel 6 noise

¹*Amendment of Section 73.73.622(i), Post-Transition Table of DTV Allotments, Television Stations (Schenectady, New York)*, MB Docket No. 21-127, Notice of Proposed Rulemaking, DA 21-398 (rel. Apr. 5, 2021) (*NPRM*).

² As noted in the *NPRM*, on April 13, 2017, the Commission completed the incentive auction and broadcast television spectrum repacking authorized by the Spectrum Act, and the post-incentive auction transition period ended on July 13, 2020. The Bureau will amend the rules to reflect all new full power channel assignments in a revised Table of Allotments, but because the Table has not yet been amended, the Bureau has continued to refer to the Post-Transition Table of DTV Allotments, 47 CFR § 73.622(i) (2018), for the purpose of this proceeding. See *NPRM* at n.2.

³ 47 CFR §§ 1.415, 1.419; see also *Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

⁴ WRGB Licensee, LLC Comments (filed May 19, 2021) (WRGB Comments).

⁵ REC Networks Comments at para. 1 (filed May 17, 2021) (REC Comments).

⁶ *NPRM* at para. 2 and n.3. While the Petitioner contends that the channel substitution would benefit ATSC 3.0 reception in addition to ATSC 1.0 reception, *id.* and WRGB Comments at 1-2, we do not find the Petitioner's arguments concerning ATSC 3.0 reception to be a controlling factor in our decision, especially given the early stages of deployment and limited availability of consumer devices.

⁷ *NPRM* at para. 2.

limited contour,⁸ 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.⁹

4. REC states that it generally supports rulemaking proceedings seeking to amend the DTV Table of Allotments to substitute a high-VHF band or UHF channel in lieu of channels 5 and 6.¹⁰ REC believes clearing these channels serves to provide additional flexibility to LPFM and NCE stations operating in the reserved FM band pursuant to sections 73.525 and 73.825 of the Commission's rules (rules).¹¹ REC also recognizes the propagation characteristics of digital channel 6 operations which can cause viewer reception issues.¹²

5. As proposed, channel 35 can be substituted for channel 6 at Schenectady, New York, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's rules,¹³ at coordinates 42-37-31.3 N and 74-00-36.7 W. 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*.¹⁴ In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:¹⁵

<u>City and State</u>	<u>DTV Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop.</u>
Schenectady, New York	35	1000	392	1,759,432

6. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.¹⁶ An expedited effective date is necessary in this case to ensure that WRGB can operate with improved service to its viewers as quickly as possible.

7. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g), (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 Commission's rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS ORDERED**, That effective immediately upon the date of publication in the Federal

⁸ As the Bureau explained in the *NPRM*, it used the technical parameters of WRGB's original post-transition digital channel 6 facility (File No. BPCDT-20080307AAK) in determining any predicted loss which may occur from the proposed channel substitution. *NPRM* at n.5.

⁹ *Id.* at para. 3.

¹⁰ REC Comments at para. 2.

¹¹ *Id.*; 47 CFR §§ 73.525, 73.825. REC also states that "full-service TV clearance from Channels 6 and 5 could increase the potential for a long-term plan to reallocate 76-88 MHz (or at least 82-88 MHz) for a well needed expansion of the FM broadcast band providing a potential migration path for struggling AM broadcast stations nationwide as well as increase community radio opportunities, especially to minority and other niche communities." This argument is outside the scope of this proceeding and thus, we give it no consideration here.

¹² REC Comments at para. 3.

¹³ 47 CFR § 73.625(a).

¹⁴ 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.

¹⁵ 47 CFR §§ 73.616, 73.623.

¹⁶ 5 U.S.C. § 553(d)(3).

Register, the DTV Table of Allotments, section 73.622(i) of the Commission's rules, 47 CFR § 73.622(i), **IS AMENDED**, with respect to the community listed below, to read as follows:

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

8. **IT IS FURTHER ORDERED**, That within 30 days of the effective date of this Order, WRGB Licensee, LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 35 in lieu of channel 6.

9. **IT IS FURTHER ORDERED**, That pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of the Order to Congress and to the Government Accountability Office.

10. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 21-127 and RM-11894 **SHALL BE TERMINATED** and its docket closed.

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
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