

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

In the Matter of)
)
Amendment of Section 73.622(i), Post-Transition) MB Docket No. 21-254
Table of DTV Allotments, Television Broadcast) RM-11911
Stations (Fredericksburg, Texas))

NOTICE OF PROPOSED RULEMAKING

Adopted: June 16, 2021

Released: June 16, 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 March 12, 2021, and amended June 1, 2021, by Corridor Television, L.L.P., (Petitioner), the licensee of KCWX (MyNetwork), channel 5, Fredericksburg, Texas. The Petitioner requests the substitution of channel 8 for channel 5 at Fredericksburg, Texas, in the DTV Table of Allotments.

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner states that since it converted to digital channel 5 operations in 2009, it has received numerous complaints from the public about poor reception. Petitioner further states that while it is operating with an effective radiated power of 45 kW, this power increase did not resolve the reception issues, due to the "cliff effect" of digital signals. The

1 Petition of Corridor Television L.L.P. for Rulemaking (filed Mar. 12, 2021), LMS File No. 0000139110 (Petition). Petitioner amended its Petition on June 1, 2021 (Amended Engineering Statement) at the staff's request to provide additional information about the estimated loss area. The Petitioner is proposing to apply for a Distributed Transmission System (DTS) facility on channel 8 if its channel substitution request is granted, and thus, amended its petition after the pertinent portions of the new DTS rules, which afford television broadcasters greater flexibility in the placement of DTS transmitters, became effective. See Rules Governing the Use of Distributed Transmission System Technologies, MB Docket No. 20-74, Report and Order, 36 FCC Rcd 1227 (2021); 86 FR 21217 (Apr. 22, 2021) (portions of new rules effective May 24, 2021).

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 Petition at 1.

4 Id. at 2-3. The Petitioner explains that even a weak, distant analog channel 2 signal could be viewable at times through the "snow" of interference and noise, but that this phenomenon (distinct program resolution through

(continued....)

Petitioner recounts the steps it has taken to improve reception on its low-VHF channel, including obtaining authorizations for digital replacement translators, but concludes that it has no option to resolve the Station's reception problems other than to move from its low-VHF channel 5 to high-VHF channel 8.⁵

3. In the Amended Engineering Statement filed June 4, 2021, the Petitioner proposes to utilize a DTS facility comprised of six single frequency network (SFN) nodes.⁶ According to the Petitioner, "the combination of these facilities will cover the vast majority of the KCWX-DT repack allotment service contour, and minimize 'loss' areas, especially 'underserved' loss areas due to the channel change."⁷ The Petitioner identifies three separate loss areas, which it labels Loss Areas 1, 2, and 3.⁸ The Petitioner submitted documentation showing that Loss Area 1 would continue to be served by five other full-power television stations and that Loss Area 2 would continue be served by eight other full-power television stations.⁹ While Loss Area 3 would only continue to receive service from one full-power television stations, only 14 people live in this area, a number the Petitioner asserts is *de minimis*.¹⁰

III. DISCUSSION

4. We believe that the Petitioner's channel substitution proposal warrants consideration. Channel 8 can be substituted for channel 5 at Fredericksburg, Texas, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's rules (rules),¹¹ at coordinates 30-08-13.7 N and 098-36-36.1 W. Since the proposed facility is located within the Mexican coordination zone, concurrence from the Mexican government must be obtained for this allotment. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules.¹² While the Petitioner's proposal would result in the loss of the second service to 14 people, the Commission considers that number to be *de minimis*.¹³

5. We propose to substitute channel 8 for channel 5 for KCWX with the following specifications:

| <u>City and State</u> | <u>DTV Channel</u> | <u>DTV Power (kW)</u> | <u>Antenna HAAT (m)</u> |
|-----------------------|--------------------|-----------------------|-------------------------|
| Fredericksburg, Texas | 8 | 17 | 412 |

significant noise/interference) does not apply to digital channels. Either there is enough digital signal to translate into viewable picture, or there is not (i.e., the term "cliff effect").

⁵ Petition at 3-4.

⁶ Amended Engineering Statement, Engineering Statement at 1. These nodes would be located at sites in or near Fredericksburg, Austin, San Antonio, D'Hanis, Mountain Home, and San Saba, Texas. *Id.* at 1-9.

⁷ Amended Engineering Statement, Loss Area Analysis at 1.

⁸ *Id.* at 1.

⁹ *Id.*, *passim*.

¹⁰ *Id.*

¹¹ 47 CFR § 73.625(a).

¹² 47 CFR §§ 73.616, 73.623.

¹³ See *WSET, Inc.*, 80 FCC Rcd 233, 246 (1980) (finding loss area population of 500 people to be *de minimis*).

6. Accordingly, we seek comment on the proposed amendment of the Post-Transition Table of DTV Allotments, section 73.622(i) of the rules,¹⁴ for the community listed below, to read as follows:

| <u>City and State</u> | <u>Channel No.</u> | |
|-----------------------|--------------------|-----------------|
| | <u>Present</u> | <u>Proposed</u> |
| Fredericksburg, Texas | 5 | 8 |

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.¹⁵ 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.¹⁶

8. *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.¹⁷
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁸

9. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,¹⁹ 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).²⁰

- **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

¹⁴ 47 CFR § 73.622(i).

¹⁵ 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).

¹⁶ 47 CFR § 1.420(j).

¹⁷ 47 CFR § 1.420(d).

¹⁸ 47 CFR § 1.420(g)(2).

¹⁹ 47 CFR §§ 1.415, 1.419, and 1.420.

²⁰ 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-19.²¹
- 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,²² 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.²³ Additionally, a copy of such comments should be served on counsel for the Petitioner, as follows:

Jonathan Mark, Esq.
Davis Wright Tremain LLP
1301 K Street, NW
Suite 500 East
Washington, D.C. 20005

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.²⁴ 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.²⁵ 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.²⁶ 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

²¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

²² 47 CFR § 1.420.

²³ See 47 CFR § 1.420(a), (b) and (c).

²⁴ 47 CFR §§ 1.1200 *et seq.*

²⁵ 47 CFR § 1.1208.

²⁶ 47 CFR § 1.1204(a)(10).

this service requirement.²⁷ 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,²⁸ do not apply to a rulemaking proceeding to amend the DTV Table of Allotments, section 73.622(i) of the rules.²⁹ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.³⁰ 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 2002.³¹

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 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.

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. 21-254 and RM-11911 on or

²⁷ 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).

²⁸ 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).

²⁹ 47 CFR § 73.622(i).

³⁰ See 44 U.S.C. §§ 3501-3520.

³¹ See 44 U.S.C. § 3506(c)(4).

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