

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

In the Matter of)	
)	
Amendment of Section 73.622(j),)	MB Docket No. 21-73
Post-Transition Table of DTV Allotments,)	RM-11889
Television Broadcast Stations)	
(Toledo, Ohio))	

REPORT AND ORDER

Adopted: February 18, 2022

Released: February 22, 2022

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 Dominion Broadcasting, Inc. (Petitioner), the licensee of WLMB, channel 5, Toledo, Ohio (WLMB or Station). The Petitioner requests the substitution of channel 35 for channel 5 at Toledo in the Table of Allotments.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. No other comments were filed.

2. We find the public interest would be served by substituting channel 35 for channel 5 at Toledo, Ohio. The Petitioner states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers,⁴ and WLMB has regularly received complaints from viewers unable to receive the Station's over-the-air signal on digital channel 5.⁵ In this regard, the Petitioner submitted the statement of Dr. Jamey Schmitz, President and CEO of the Petitioner, who explains that since the Station transitioned from analog UHF channel 40 to digital VHF channel 5 at the end of the DTV transition in 2009, it has regularly received communications from viewers no longer able to see the Station.⁶ WLMB has had information on its website for many years instructing viewers how to better receive its signal over-the-air, but continues to receive complaints. Mr. Schmitz further explains that after WLMB began operating solely on digital channel 5,

¹ *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Stations (Toledo, Ohio)*, MB Docket No. 21-73, Notice of Proposed Rulemaking, 36 FCC Rcd 4808 (Vid. Div. 2021) (*NPRM*).

² As noted in the *NPRM* at n.2, 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. At the time the *NPRM* was issued, the Commission had not yet amended its rules to reflect all new full power channel assignments in a revised Table of Allotments. Accordingly, the *NPRM* referred to the Post-Transition Table of DTV Allotments, 47 CFR § 73.622(i) (2018). The Commission has now adopted the new Table of Allotments, 47 CFR § 73.622(j), and this *Report and Order* amends the new rule. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, GN Docket No. 12-268, Order, FCC 21-111 (rel. Oct. 25, 2021).

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 *NPRM*, 36 FCC Rcd at 4808, para. 2.

⁵ *Id.*

⁶ Petition at 3 and Exhibit A. WLMB is the only low VHF station in the Toledo Designated Market Area (DMA). Petition at 1.

in order to watch the Station at the main studio, located only 14 miles from the transmitter, the Petitioner had to mount an outside antenna specifically designed to receive a channel 5 signal.⁷ Mr. Schmitz also estimates that after the DTV transition, he received over 200 inquiries from viewers who could no longer see the Station's signal, and the Petitioner included statements from a number of viewers, some of whom live in the community of license, stating that they are unable to view the Station over-the-air. According to the Petitioner, while 735,018 persons are predicted to lose service, all but 388 persons in the loss area would otherwise continue to be "well served" by five or more other television services.⁸

3. We agree with the Petitioner that because almost all of the impacted viewers will continue to be "well-served" by at least five other television stations⁹ and the loss of service to 388 persons who will no longer be considered to be "well-served" is *de minimis*,¹⁰ the substitution of channel 35 for channel 5 will serve the public interest. We also agree that there are countervailing public interest benefits here that would offset any loss of service in outlying areas of the Station's contour, given the persistent feedback the Station has received regarding reception issues within its community of license and other core portions of its service area.¹¹

4. The Petitioner demonstrates, and a staff engineering analysis confirms, that channel 35 can be substituted for channel 5 at Toledo, Ohio, consistent with the minimum geographic spacing requirements for new DTV allotments in section 73.623(d) of the Commission's rules (rules),¹² at 41° 44' 41" N and 84° 01' 06" W.¹³ In addition, we find that this channel change meets the technical requirements set forth in 73.616 and 73.623 of the rules with the following specifications:¹⁴

<u>City and State</u>	<u>DTV Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Population</u>
Toledo, Ohio	35	375	169.7	1,668,529

⁷ Petition, Exh. A at 9.

⁸ *NPRM*, 36 FCC Rcd. at 4809, para. 4.

⁹ The Commission has previously stated that it is "generally most concerned where there is a loss of an area's only network or NCE TV service, or where the loss results in an area becoming less than well-served, i.e., served by fewer than five full-power stations." *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, para. 38 (2007). We note that WLMB is not a network affiliate or noncommercial educational station. Furthermore, most of the viewers losing service are located in DMAs other than the Toledo DMA, which is the DMA WLMB primarily serves and in which its community of license is located. See Petition at Exh. E-4. Additionally, based on the propagation characteristics of WLMB's current VHF signal, we believe it is unlikely that any persons that are in the Toledo DMA that are able to receive WLMB's signal will lose access to the Station as a result of this channel substitution, and to the extent there is any loss, it would be considered *de minimis*. Likewise, any viewers outside of the Toledo DMA that are within the Station's current contour but predicted to lose service are, for the same reason, unlikely to actually be receiving WLMB's signal today. While these factors relating to DMA are not controlling, they do provide additional factors that support grant of the instant channel substitution.

¹⁰ See *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that population loss of less than 500 persons is *de minimis*).

¹¹ *NPRM*, 36 FCC Rcd at 4809, para. 5; *supra* para. 2.

¹² 47 CFR § 73.623(d).

¹³ On September 14, 2021, the Petitioner amended its petition to avoid potential interference with Canadian television stations. See Petition for Rulemaking of Dominion Broadcasting, Inc. as Amended (LMS File No. 00000127485, filed Sept. 14, 2021). Concurrence from the Canadian government has been obtained for this allotment.

¹⁴ 47 CFR §§ 73.616, 73.623.

5. Accordingly, pursuant to the authority contained in 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 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 Register, the DTV Table of Allotments, section 73.622(j) of the Commission's rules, 47 CFR § 73.622(j), **IS AMENDED**, with respect to the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>
Toledo, Ohio	11, 13, 23, 26, *29, 35

6. **IT IS FURTHER ORDERED**, That within 30 days of the effective date of this Order, Dominion Broadcasting, Inc. shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 35 in lieu of channel 5.

7. **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.

8. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 21-73, RM-11889 **SHALL BE TERMINATED** and its docket closed.

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau