

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

In the Matter of)
)
Amendment of Section 73.622(j), Table of) MB Docket No. 22-13
Allotments, Television Broadcast Stations (Albany,) RM-11914
New York))

NOTICE OF PROPOSED RULEMAKING

Adopted: January 11, 2022

Released: January 11, 2022

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 August 10, 2021 by WNYT-TV, LLC (Petitioner), the licensee of WNYT , channel 12, Albany, New York.1 The Petitioner requests the substitution of channel 21 for channel 12 at Albany, New York, in the Table of Allotments.2

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner states that WNYT has a long history of significant reception problems given the local terrain,3 and that these problems have been exacerbated by the station’s conversion from analog to digital operations. According to the Petitioner, once the station began operating solely in digital on VHF channel 12, it received numerous complaints from viewers about the station’s over-the-air signal.4 In response to these complaints, the Petitioner applied for and received modification authorizations to increase WNYT’s effective radiated power (ERP)

1 Petition of WNYT-TV, LLC for Rulemaking (LMS File No. 0000156619, filed Aug. 10, 2021). The Petitioner amended its Petition on August 13, 2021 to update its technical statement (Amended Petition and Technical Statement).

2 The Commission recently released an Order adopting a revised Table of Allotments, 47 CFR § 73.622(j), to codify Commission actions taken over the past several years that modified the Post-Transition Table of DTV Allotments, 47 CFR § 73.622(i), as it appears in the October 1, 2018 version of the Code of Federal Regulations. See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction, Docket No. 12-268, Order, FCC 21-111 (rel. Oct. 25, 2021). These actions primarily related to the incentive auction and repacking process 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). If the Media Bureau adopts the Petitioner’s proposed channel substitution, it will amend the recently adopted Table of Allotments.

3 Amended Petition at 2. The Petitioner states that because of the proximity of the Green, Berkshire, Catskill, and Adirondack mountain ranges, it has operated multiple television translator stations in an effort to serve viewers. Amended Petition. at n.2.

4 Id. at 2.

from 9.1 kW to 30 kW.⁵ Petitioner also tried other means to improve viewers' digital reception, including constructing two digital replacement translators.⁶

3. According to the Petitioner, its proposal will result in a net gain in service to 289,588 persons within WNYT's predicted noise limited service contour. While the proposal will result in a loss population of 210 persons within the predicted noise limited contour,⁷ the Petitioner demonstrated that the population within the loss area is currently served by at least five over-the-air television services.⁸ In addition, WNYT is an NBC affiliate, and the Petitioner submitted an analysis, using the Commission's *TVStudy* software analysis program, demonstrating that after taking into account service provided by other NBC stations, all of the population located within WNYT's original DTV channel 12 noise limited contour will continue to receive NBC service, except for 130 people.⁹

III. DISCUSSION

4. We believe that the Petitioner's channel substitution proposal warrants consideration. Channel 21 can be substituted for channel 12 at Albany, New York, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's rules (rules),¹⁰ at coordinates 42° 37' 31.3" N and 074° 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.¹¹ Although the Petitioner's proposal would result in a loss of NBC service to approximately 130 people, we find such a loss to be *de minimis*.¹² Thus, we propose to substitute channel 21 for channel 12 for WNYT with the following specifications:

| <u>City and State</u> | <u>Television Channel</u> | <u>Power (kW)</u> | <u>Antenna HAAT (m)</u> |
|-----------------------|---------------------------|-------------------|-------------------------|
| Albany, New York | 21 | 970 | 414 |

⁵ Amended Technical Statement at 1.

⁶ Amended Petition at 4.

⁷ After transitioning to its pre-transition digital channel 12 facility at 9.1 kW effective radiated power (FCC File No. BLCDDT-20031022ABL), the Petitioner was granted a construction permit to increase power to 15 kW (FCC File Nos. BPCDDT-20080620ADA and BLCDDT-20100505AHT). *See also* Amended Technical Statement at 1. An application was later filed to change the antenna and increase ERP to 30 kW (FCC File No. BPDCT-20120123ACG), which was subsequently constructed and licensed under LMS File No. 0000004731. *Id.* These modifications to WNYT's pre-transition facility, however, were intended solely to improve reception to existing viewers of digital channel 12 when WNYT ceased analog operations. *See* Amended Technical Statement at 3. Accordingly, the Bureau has used the technical parameters of WNYT's original pre-transition digital channel 12 facility (FCC File No. BLCDDT-20031022ABL) in determining any predicted loss which may occur from the proposed channel substitution.

⁸ Amended Technical Statement at 3.

⁹ *Id.* at 1. The Petitioner also states that the proposed channel 21 facility will result in 30,075 persons gaining access to NBC network programming that did not have it before. Amended Technical Statement at 4.

¹⁰ 47 CFR § 73.625(a).

¹¹ 47 CFR §§ 73.616, 73.623.

¹² *See WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that population loss of less than 500 persons is *de minimis*).

5. Accordingly, we seek comment on the proposed amendment of the Table of Allotments, section 73.622(j) of the rules,¹³ for the community listed below, to read as follows:

| <u>City and State</u> | <u>Channel No.</u> | |
|-----------------------|--------------------|-----------------|
| | <u>Present</u> | <u>Proposed</u> |
| Albany, New York | 8, 12, 24 | 8, 21, 24 |

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.¹⁴ 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.¹⁵

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.¹⁶
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁷

8. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,¹⁸ 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).¹⁹

- **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

¹³ 47 CFR § 73.622(j).

¹⁴ 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).

¹⁵ 47 CFR § 1.420(j).

¹⁶ 47 CFR § 1.420(d).

¹⁷ 47 CFR § 1.420(g)(2).

¹⁸ 47 CFR §§ 1.415, 1.419, and 1.420.

¹⁹ 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-19.²⁰
- 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,²¹ 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.²² Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

William F. LeBeau, Esq.
Holland & Knight LLP
Suite 1100
800 17th Street, NW
Washington, D.C. 20006

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.²³ 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.²⁴ 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.²⁵ 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.²⁶ Any comment that has not been served on the petitioner constitutes an *ex parte*

²⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

²¹ 47 CFR § 1.420.

²² See 47 CFR § 1.420(a), (b), and (c).

²³ 47 CFR §§ 1.1200 *et seq.*

²⁴ 47 CFR § 1.1208.

²⁵ 47 CFR § 1.1204(a)(10).

²⁶ 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

(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,²⁷ do not apply to a rulemaking proceeding to amend the Table of Allotments, section 73.622(j) of the rules.²⁸ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.²⁹ 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 2002.³⁰

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 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.

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 Table of Allotments, section 73.622(j) of the rules, 47 CFR § 73.622(j), 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. 22-13 and RM-11914 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

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).

²⁷ 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).

²⁸ 47 CFR § 73.622(j).

²⁹ See 44 U.S.C. §§ 3501-3520.

³⁰ See 44 U.S.C. § 3506(c)(4).