

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

In the Matter of)
)
Amendment of Section 73.622(j), Table of) MB Docket No. 22-146
Allotments, Television Broadcast) RM-11925
Stations (Memphis, Tennessee))

NOTICE OF PROPOSED RULEMAKING

Adopted: April 5, 2022

Released: April 5, 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 (Bureau), has before it a petition for rulemaking filed by Gray Television Licensee, LLC (Petitioner), the licensee of WMC-TV, channel 5, Memphis, Tennessee (WMC-TV or Station).1 The Petitioner requests the substitution of channel 30 for channel 5 at Memphis in the Table of Allotments.2

II. BACKGROUND

2. In support, the Petitioner states that the proposed channel substitution serves the public interest because it will resolve significant over-the-air reception problems in WMC-TV's existing service area.3 The Petitioner further states that the Commission has recognized the deleterious effects manmade noise has on the reception of digital VHF signals, and that the propagation characteristics of these channels allow undesired signals and noise to be receivable at relatively farther distances compared to UHF channels, and nearby electrical devices can cause interference.4 According to the Petitioner, an analysis using the Commission's TVStudy software tool indicates that WMC-TV's move from channel 5 to channel 30 is predicted to create an area where 4,072 persons are predicted to lose service. The loss

1 Petition of Gray Television Licensee, LLC for Rulemaking (filed Nov. 27, 2020, LMS File No. 0000127522)(the November 2020 Petition). Gray requested confidential treatment for certain information contained in the November 2020 Petition pursuant to sections 0.459 and 0.457 of the Commission's rules (rules), 47 CFR §§ 0.457, 0.459, and the Freedom of Information Act, 5 U.S.C. § 552. Gray amended on February 10, 2022 to provide a supplemental engineering statement with a further analysis of the population served by the proposed channel 30 facility and low power television stations (LPTV) acquired by Gray. (Amended Petition and Supplemental Engineering Statement). Because the Amended Petition and Supplemental Engineering Statement does not include the confidential information or the legal and economic arguments on which it was based, we are dismissing the November 2020 Petition.

2 47 CFR § 73.622(j).

3 Amended Petition at 3.

4 Id. at 3, 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, para. 42 (2010).

area, however, is largely overlapped by the noise limited contours of other NBC affiliated stations⁵ and most viewers will continue to receive service from five or more stations.⁶ As a result, Petitioner asserts that only 64 persons would either (1) no longer receive NBC network programming or (2) no longer receive service from five or more full power television services.⁷ In practice, Gray expects that few if any persons who are currently able to receive WMC-TV's over-the-air signal on channel 5 would no longer be able to receive WMC-TV's over-the-air signal as a result of the transition to channel 30.⁸

III. DISCUSSION

3. We believe that the Petitioner's channel substitution proposal warrants consideration. Channel 30 can be substituted for channel 5 at Memphis, Tennessee, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's rules,⁹ at coordinates 35° 10' 09" N and 89° 53' 10" 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.¹⁰ While 64 persons would either lose their sole NBC network service or lose access to five or more full power television stations, we find that the overall benefits of the proposed channel change outweigh any possible harm to the public interest, given the fact that the loss of NBC service is ultimately *de minimis* when taking into account the ability of those viewers to access NBC programming from other over-the-air television stations.¹¹ We also note that most viewers in the loss area would continue to have access to at least five or more full power television services, including major network programming.¹² Furthermore, an additional television service containing major network programming is provided to a population of 84,190 persons, of which 74,118 persons presently have less than five other television services. Of those 74,118 persons with less

⁵ These stations are WTVA, channel 11, Tupelo, Mississippi, licensed to Mississippi TV License Company LLC; KAIT, channel 27, Jonesboro, Arkansas, licensed to the Petitioner; and WNBj-LD, channel 16, Jackson, Tennessee, licensed to CTT Licensee LLC. Supplemental Engineering Exhibit, Figures 2, 3. The Petitioner also recently acquired LPTV stations WANF-LD, channel 32 (LMS File No. 0000184303); WDDY-LD, channel 15 (LMS File No. 0000184301); and W20DW-D, channel 20 (LMS File No. 0000168111) and filed minor modification applications to engineer the stations to better serve the loss areas created by its proposal. See Supplemental Engineering Statement at 1-2. While these low power television stations, including WNBj-LD, are secondary, and can be displaced by minor modifications proposed by currently licensed full power television stations or new television station allotments, we believe that it is unlikely that these stations would be displaced, and if they were, the licensees would be able to find displacement channels for them.

⁶ Supplemental Engineering Statement at 3.

⁷ Amended Petition at 5; Supplemental Engineering Statement at 4-5, Figure 3. 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).

⁸ Amended Petition at 5.

⁹ 47 CFR § 73.625(a).

¹⁰ 47 CFR §§ 73.616, 73.623.

¹¹ See *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that population loss of less than 500 persons is *de minimis*). Moreover, 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).

¹² The Supplemental Engineering Statement shows that the loss area is also partially overlapped by the noise-limited contours of television stations WLJT-DT (PBS) Lexington, Tennessee; WBBj-TV (ABC/CBS) and WJKT (FOX) Jackson, Tennessee; WMAE-TV (PBS) Booneville, Mississippi; WMAV-TV (PBS) Oxford, Mississippi; WMAO-TV (PBS) and WABG-TV (ABC/FOX) Greenwood, Mississippi; and KETS (PBS) and KTHV (CBS) Little Rock, Arkansas. Thus, viewers in the loss area would continue to have access to other major network programming.

than five other television services, 65,704 persons would receive over-the-air NBC service for the first time.¹³

4. We propose to substitute channel 30 for channel 5 for WMC-TV with the following specifications:

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>
Memphis, Tennessee	30	515	307.7

5. Accordingly, we seek comment on the proposed amendment of the Table of Allotments, section 73.622(j) of the rules,¹⁴ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	<u>Proposed</u>
Memphis, Tennessee	5, 13, 23, 25, 28, *29, 31, 33	13, 23, 25, 28, *29, 30, 31, 33

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.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

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

8. *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

¹³ Supplemental Engineering Statement at 5.

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).

- 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-19.²¹
 - 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.

9. *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:

Joan Stewart, Esq.
Wiley Rein LLP
2050 M Street, NW
Washington, D.C. 20036

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.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

²¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 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.

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 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.

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,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

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. 22-146 and RM-11925 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.

²⁶ 47 CFR § 1.1204(a)(10).

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).

17. **IT IS FURTHER ORDERED** that, the Petition for Rulemaking and Request for Confidential Treatment and associated information request for confidential treatment filed by Gray Television Broadcasting LLC on November 27, 2020 **ARE DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau