

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

In the Matter of)	
)	
Amendment of Section 73.622(j),)	MB Docket No. 22-112
Table of Allotments, Television Broadcast)	RM-11919
Stations (Weston, West Virginia))	
)	

REPORT AND ORDER

(Proceeding Terminated)

Adopted: May 12, 2022

Released: May 12, 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 Gray Television Licensee, LLC (Petitioner), the licensee of television station WDTV (Station), channel 5, Weston, West Virginia. The Petitioner has requested the substitution of UHF channel 33 for VHF channel 5 in the Table of Allotments. The Petitioner filed comments in support of the petition, as required by the Commission's rules,² reaffirming its commitment to apply for channel 33. No other comments were received.

2. We believe the public interest would be served by substituting channel 33 for channel 5 at Weston, West Virginia. According to the Petitioner, the Commission has recognized the negative 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.³ A total of 388,223 persons are predicted to lose service using a contour analysis, however all but 4,142 persons will continue to receive CBS service from other stations in the region or continue to be well served by five or more television services.⁴ Moreover, a terrain-limited analysis using the Commission's *TVStudy* software demonstrates that only 498 persons would no longer receive CBS network programming or

¹ *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Stations (Weston, West Virginia)*, MB Docket No. 22-112, Notice of Proposed Rulemaking, DA 22-240 (rel. Mar. 9, 2022) (*NPRM*).

² 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).

³ *NPRM* at para. 2.

⁴ Viewers in the loss area can obtain CBS programing from other Nielsen Designated Market Areas including Pittsburgh, Pennsylvania; Wheeling, West Virginia – Steubenville, Ohio; Parkersburg, West Virginia – Marietta, Ohio; and Huntington, West Virginia. When evaluating viewer loss Gray also took into account its licensed sister station WVFX (LMS File No. 0000179139, gr. Jan. 12, 2021), which is co-located with WDTV and carries CBS network programing on a multicast channel. In addition, Gray relies on CBS programming carried on commonly owned and operated station WIYE-LD, Parkersburg, West Virginia. We note that while low power television (LPTV) stations are secondary and can be displaced by full power television stations, we believe it is unlikely that WIYE-LD will be displaced, and determined that there are multiple displacement channels available if it was displaced. *Id.* at para. 3 and n.5.

receive service from five or more full power television services,⁵ a number the Commission considers *de minimis*.⁶

3. As proposed, channel 33 can be substituted for channel 5 at Weston, West Virginia, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's rules,⁷ at coordinates 39° 18' 02.0" N and 08° 20' 36.0" W. Although the Petitioner's proposal would result in a loss of 498 persons that would either no longer receive CBS service or maintain access to five or more over-the-air television services, we find the overall benefits of the proposed channel change outweigh any possible harm to the public interest, given the fact that the loss of CBS service is ultimately *de minimis* and taking into account the ability of viewers to access at least five or more other stations or CBS network programming from other over-the-air television stations.⁸ We also 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:⁹

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Weston, West Virginia	33	935	228.1	556,592

4. 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.¹⁰ An expedited effective date is necessary in this case to ensure that WDTV can operate with improved service to its viewers as quickly as possible.

5. 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 Register, the 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>
Weston, West Virginia	33

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, Gray Television Licensee, LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 33 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.

⁵ The Commission 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).

⁶ *Id.* at para. 3; *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that population loss of less than 500 persons is *de minimis*).

⁷ 47 CFR § 73.625(a).

⁸ *See supra* para. 2.

⁹ 47 CFR §§ 73.616, 73.623.

¹⁰ 5 U.S.C. § 553(d)(3).

8. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 22-112 and RM-11919 **SHALL BE TERMINATED** and its docket closed.

9. 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
Media Bureau