

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j),	)	MB Docket No. 21-248
Table of Allotments, Television Broadcast	)	RM-11910
Stations (Staunton, Virginia)	)	
	)	

**REPORT AND ORDER**

**(Proceeding Terminated)**

**Adopted: September 1, 2022**

**Released: September 1, 2022**

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking<sup>1</sup> issued in response to a Petition for Rulemaking filed by VPM Media Corporation (VPM or Petitioner),<sup>2</sup> the licensee of noncommercial educational (NCE) television station WVPT (WVPT or Station), channel \*11, Staunton, Virginia. The Petitioner has requested the substitution of UHF channel \*15 for VHF channel \*11 in the Table of Allotments.<sup>3</sup> The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules),<sup>4</sup> reaffirming its commitment to apply for channel \*15. No other comments were received. The Petitioner amended its rulemaking petition on August 29, 2022 to propose new technical parameters as the result of the Petitioner's discussions with the National Radio Astronomy Observatory (NRAO).<sup>5</sup>

<sup>1</sup> *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Stations (Staunton, Virginia)*, MB Docket No. 21-248, Notice of Proposed Rulemaking, DA 21-694 (rel. June 15, 2021) (*NPRM*).

<sup>2</sup> Petition for Rulemaking of VPM Media Corporation, LMS File No. 0000149712, MB Docket No. 21-148, and Rulemaking No. 11910 (filed Jun. 4, 2021, amended Aug. 29, 2022) (Amended Petition).

<sup>3</sup> 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), which listed WVPT's pre-incentive auction channel \*11. The Commission has now adopted the new Table of Allotments, 47 CFR § 73.622(j), which reflects WVPT's repacked channel \*12. 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). While the Station was repacked to channel \*12, for the purpose of this proceeding, the Bureau continues to refer to the Station's pre-auction channel \*11. NCE television stations are identified in the Table of Allotments by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR § 73.622(a).

<sup>4</sup> 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).

<sup>5</sup> WVPT is located within the National Radio Quiet Zone, an area of approximately 13,000 square miles, which was created to minimize possible harmful interference at the NRAO site located at Green Bank, West Virginia, and the Naval Radio Research Observatory (NRRO) site at Sugar Grove, West Virginia. Section 1.924(a) of the rules, 47 CFR § 1.924(a), requires that the NRAO be notified, in writing, of any proposed construction and operation of a new or modified station at a permanent fixed location in the Quiet Zone, including the technical details of the proposed operation. Petitioner amended its Petition for Rulemaking on August 29, 2022 to provide, *inter alia*, a Letter of

(continued....)

2. We believe the public interest would be served by substituting channel \*15 for channel \*11 at Staunton, Virginia. As the Petitioner notes, the challenges of digital reception are well-documented and the Commission has recognized the deleterious effects of manmade noise on the reception of digital VHF signals, including VHF channel propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and nearby electrical devices to cause interference.<sup>6</sup> The Petitioner states that WVPT routinely receives calls from viewers with reception issues based on its VHF channel.<sup>7</sup> The Petitioner also believes the channel substitution will allow for more efficient construction of WVPT's post-incentive auction facilities.<sup>8</sup> Petitioner further states that WVPT experienced a substantial loss of viewers in its service area due to these propagation characteristics, which are exacerbated by rugged terrain.<sup>9</sup> The proposed channel \*15 facilities will result in a small loss area when compared to WVPT's existing service area, largely due to the deep null required for the proposed WVPT-1 site on channel \*15 to protect the NRAO and SGRS (formerly NRRO).<sup>10</sup> However, the Station will continue to serve this area by operating from its current WVPT-3 site as a translator on either channel \*11 (its current licensed channel) or channel \*12 (its current temporary channel).<sup>11</sup> Furthermore, a staff analysis confirms that the change in channel will result in a gain of 34,790 new viewers that previously did not have access to WVPT, and a loss of noncommercial educational service to 477 persons, which is *de minimis*.<sup>12</sup>

3. As proposed, channel \*15 can be substituted for channel \*11 at Staunton, Virginia, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,<sup>13</sup> at coordinates 38-09-54.4 N and 79-18-50.1 W. Although the Petitioner's proposal would result in a loss for a limited number of viewers, we find that the overall benefits of the proposed channel change outweighs any possible harm to the public interest when taking into account the ability of all but a *de minimis* number of viewers to access PBS programming from another source. In addition, we find that this channel

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Concurrence, dated August 12, 2022, from the National Radio Quiet Zone (NRQZ) confirming that neither the NRAO or the Sugar Grove Research Station (SGRS, formerly the NRRO) object to this frequency assignment, subject to continued coordination. See Amended Petition, Attachment 1, Letter from Sheldon Wasik, Program Administrator, NRQZ, to WVPT (Aug. 11, 2022).

<sup>6</sup> *NPRM* at para. 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at para. 3.

<sup>9</sup> *Id.*

<sup>10</sup> See *supra* note 5.

<sup>11</sup> August 2022 VPM Amended Petition for Rulemaking at 5-6. In the *Closing and Channel Reassignment Public Notice*, the FCC assigned WVPT to transition from channel \*11 to channel \*12. See *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*, Docket No. 12-258, Public Notice, 32 FCC Red 2786 (WTB/MB/IATF 2017). The Petitioner has a pending construction permit to relocate WVPT to channel \*12, on which it is operating pursuant to special temporary authorization (STA), but the Station is still licensed to operate on channel \*11. See LMS File Nos. 0000028448 (construction permit); 0000129932 (tolling); and BLEDT-20130214ACP (license). The Station currently operates its channel \*12 STA with a four-site Distributed Transmission System (DTS) facility, see 47 CFR § 73.626, and proposes to operate a three-site DTS operation on channel \*15 with a translator on either channel \*11 or \*12 replacing the DTS operation at the fourth site since NRAO would object to operation on channel \*15 from that location at "any viable power." See August 2022 Amended Petition, Engineering Statement in Support of Petition to Amend at n.2. Individual DTS sites are referred to herein as WVPT-the site number (e.g., WVPT-1 and so on).

<sup>12</sup> See *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that loss of network service to approximately 500 persons is *de minimis*).

<sup>13</sup> 47 CFR § 73.625(a).

change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:<sup>14</sup>

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Staunton, Virginia	*15	195	680	965,699

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.<sup>15</sup> An expedited effective date is necessary in this case to ensure that WVPT 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 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>
Staunton, Virginia	*15

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, VPM Media Corporation shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel \*15.

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. 21-248 and RM-11910 **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

<sup>14</sup> 47 CFR §§ 73.616, 73.623.

<sup>15</sup> 5 U.S.C. § 553(d)(3).