

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

In the Matter of)	
)	
Amendment of Section 73.622(j), Table of)	MB Docket No. 23-380
Allotments, Television Broadcast Stations)	RM-11968
(Missoula, Montana))	

NOTICE OF PROPOSED RULEMAKING

Adopted: November 7, 2023

Released: November 7, 2023

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 August 16, 2023, by Sinclair Media Licensee, LLC (Petitioner or Sinclair), the licensee of KECI-TV, channel 13, Missoula, Montana (Station or KECI-TV).¹ As discussed below, the Station is currently operating on channel 13 and Sinclair successfully petitioned to have its channel changed from channel 13 to channel 20. The Petitioner now requests the substitution of channel 21 for channel 20 at Missoula, Montana (Missoula) in the Table of TV Allotments.

II. BACKGROUND

2. In 2021, the Bureau granted Sinclair's request to substitute UHF channel 20 for VHF channel 13 at Missoula,² and Sinclair currently holds a construction permit to modify its facility to operate on channel 20.³ While the adopted channel 20 noise limited service contour (NLSC) did not completely encompass the relevant channel 13 NLSC,⁴ the Bureau found there would only be a loss of service to approximately 65 persons, a number the Commission considers *de minimis*.⁵ In addition, the adopted channel 20 facility is predicted to serve a total of 252,689 persons, a net gain of 38,879 potential viewers over the existing KECI-TV channel 13 facility.⁶

¹ Petition of Sinclair Media Licensee, LLC for Rulemaking (filed Aug. 16, 2023), LMS File No. 0000219405 (Petition).

² *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Missoula, Montana)*, MB Docket No. 21-176, Report and Order, 36 FCC Rcd 11180 (MB 2021) (*Channel 20 R&O*).

³ LMS File No. 0000156965, granted Mar. 31, 2022.

⁴ The Bureau used the technical parameters of KECI-TV's original post-transition digital channel 13 facility in determining predicted loss from the proposed channel 20 substitution. *Channel 20 R&O*, 36 FCC Rcd at 11181, n.5.

⁵ *Id.* at para. 2, citing *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that population loss of less than 500 persons is *de minimis*).

⁶ *Channel 20 R&O*, 36 FCC Rcd at 11181, para. 2.

3. Sinclair simultaneously had requested and was granted the substitution of UHF channel 20 for VHF channel 6 for co-owned station KTVM-TV, Butte, Montana (Butte) (KTVM-TV).⁷ As a result, both KTVM-TV and KECI-TV would operate on a co-channel basis. Sinclair had determined that predicted interference from both stations operating on channel 20 would affect less than 1 percent of the populations within the noise limited service contours (NLSC).⁸

4. The Petitioner now requests that we substitute channel 21 for channel 20 for KECI-TV, stating that in preparing to construct the new facilities on channel 20, “local engineering staff . . . realized that the ‘real-world’ interference consequences of [both stations] operating on [c]hannel 20 would result in a significant number of persons receiving interference, a greater impact than was realized when the *TVStudy* analyses had been done . . .”⁹ The Petitioner went on to state that “such interference would not be localized, but rather would be spread throughout large portions of the Missoula and Butte service areas.”¹⁰ An analysis provided by the Petitioner using the Commission’s *TVStudy* software tool indicates that operation of KECI-TV on channel 21 instead of channel 20 would result in an estimated 40,481 additional persons within the Station’s NLSC being able to receive the Station’s signal.¹¹ This is an increase of 1,602 person over the population that would be served if the Station were to remain on channel 20.

III. DISCUSSION

5. We believe that the Petitioner’s channel substitution proposal for KECI-TV warrants consideration. Channel 21 can be substituted for channel 20 at Missoula, Montana, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission’s Rules (rules),¹² at coordinates 47-01'-04.0" N. and 114-00'-50.0" 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.¹³ The proposed channel substitution would not cause any additional loss of service, but would increase the population served within KECI-TV’s NLSC, as well as within KTVM-TV’s NLSC, by resolving co-channel interference issues caused by the stations’ approved co-channel operation.

⁷ *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Butte, Montana)*, MB Docket No. 21-185, Report and Order, 36 FCC Rcd 11183 (MB 2021). Sinclair holds a construction permit to build a channel 20 facility for KTVM-TV at Butte. LMS File No. 0000157471 (granted Aug. 18, 2021).

⁸ Petition at 1-2.

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ Likewise, an estimated 1,647 additional persons within the KTVM-TV NLSC would be able to receive that station on channel 20 as a result of KECI-TV changing to channel 21 instead of channel 20. *Id.* at n.6 and Engineering Statement at 2.

¹² 47 CFR § 73.625(a). The Commission recently amended its rules to create a new section 73.618 (Antenna location and principal community coverage), which relocates, verbatim, the language from section 73.625(a) (DTV coverage of principal community and antenna system). See *Amendment of Part 73 of the Commission’s Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 at para. 37 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*). The amended rules are not effective as of the date of release of this Notice of Proposed Rulemaking, and, as such, we continue to make reference to 47 CFR § 73.625(a).

¹³ 47 CFR §§ 73.616, 73.623. The Commission also recently amended its rules, including combining parts of sections 73.616(a) (Post-transition DTV station interference protection), 73.622(a), and 73.623(a) into one rule that includes all requirements for modifying a television allotment, modified section 73.622(a) (Table of TV allotments). *Part 73 Amendment R&O* at para. 38. The adopted order also relocated section 73.616(c), specifying the protected facilities of TV allotments, to new section 73.619(d). *Part 73 Amendment R&O* at para. 37. As these rule changes are not yet effective, we continue to make reference to 47 CFR §§ 73.616 and 73.623.

6. We propose to substitute channel 21 for channel 20 for KECI-TV at Missoula with the following specifications:

<u>City and State</u>	<u>DTV Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Missoula, Montana	21	950	610

7. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,¹⁴ for the community listed below, to read as follows:¹⁵

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Missoula, Montana	*11, 20, 23, 25	*11, 21, 23, 25

IV. PROCEDURAL MATTERS

8. *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.¹⁶ 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.¹⁷

9. *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.¹⁸
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁹

10. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,²⁰ interested parties may file comments and reply comments on or before the dates indicated on the

¹⁴ 47 CFR § 73.622(j).

¹⁵ The Office of the Federal Register maintains a daily codification of the Code of Federal Regulations content on eCFR.gov. See <https://www.ecfr.gov/reader-aids/government-policy-and-ofr-procedures/about-this-site>. Currently, eCFR.gov does not accurately reflect the channels allotted to Missoula, as it inaccurately lists channel 7 at that community. However, effective December 15, 2022, section 73.622(j) of the rules was amended to substitute channel 7 for channel 25 at Missoula. See *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Missoula, Montana)*, MB Docket No. 22-116, Report and Order, DA 22-1233 (rel. Nov. 29, 2022), 86 Fed. Reg. 76582 (Dec. 15, 2022). We therefore refer to channel 25 for purposes of this rulemaking.

¹⁶ See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009).

¹⁷ 47 CFR § 1.420(j).

¹⁸ 47 CFR § 1.420(d).

¹⁹ 47 CFR § 1.420(g)(2).

²⁰ 47 CFR §§ 1.415, 1.419, and 1.420.

first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).²¹

- **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-19.²²
 - 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.

11. *Service.* Pursuant to section 1.420 of the rules,²³ 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.²⁴ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

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12. *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.²⁵ 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

²¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

²² See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

²³ 47 CFR § 1.420.

²⁴ See 47 CFR §1.420(a), (b) and (c).

²⁵ 47 CFR §§ 1.1200 *et seq.*

reconsideration by the Commission or review by any court.²⁶ 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.²⁷ 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.²⁸ 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.

13. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.²⁹ Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

14. *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.

15. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,³⁰ do not apply to a rulemaking proceeding to amend the Table of TV Allotments, section 73.622(j) of the rules.³¹ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.³² 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 2002.³³

16. *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).

17. *Additional Information.* For further information concerning the proceeding listed above, contact Joyce Bernstein, Video Division, Media Bureau, <mailto:Joyce.Bernstein@fcc.gov>.

²⁶ 47 CFR § 1.1208.

²⁷ 47 CFR § 1.1204(a)(10).

²⁸ 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).

²⁹ 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

³⁰ 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).

³¹ 47 CFR § 73.622(j).

³² See 44 U.S.C. §§ 3501-3520.

³³ See 44 U.S.C. § 3506(c)(4).

V. ORDERING CLAUSES

18. **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 TV Allotments, section 73.622(j) of the rules, 47 CFR § 73.622(j), as set forth in this *NPRM*, and this *NPRM IS ADOPTED*.

19. **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. 23-380 and RM-11968 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