

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

In the Matter of)
)
Amendment of Section 73.622(j), Table of) MB Docket No. 23-406
Allotments, Television Broadcast Stations) RM-11969
(Greenville, South Carolina))

NOTICE OF PROPOSED RULEMAKING

Adopted: November 27, 2023

Released: November 27, 2023

By the Chief, Video Division, Media Bureau:

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]

I. INTRODUCTION

1. The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed September 27, 2023, by Carolina Christian Broadcasting, Inc. (Petitioner), the licensee of WGGG-TV, channel 2, Greenville, South Carolina (Station or WGGG).1 The Petitioner requests the substitution of channel 29 for channel 2 at Greenville, South Carolina (Greenville) in the Table of TV Allotments.2

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner states that its proposed channel substitution would serve the public interest by resolving reception challenges currently experienced by viewers in the WGGG service area, and substantially improving access to the Station’s programming.3 According to the Petition, the Station regularly receives phone calls and email from viewers no longer able to receive the Station’s signal.4 The Petitioner notes that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including a large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on VHF channels.5

1 Petition of Carolina Christian Broadcasting, Inc. for Rulemaking (filed Sept. 27, 2023) on file at LMS File No. 0000221497 (Petition).

2 47 CFR § 73.622(j).

3 Petition at 1.

4 Id. at 3 and Exhibit A (Viewer Complaints).

5 Id. at 2, 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, paras. 42, 44 (2010) (finding that the reception capability of most antennas with respect to high-VHF channels was inferior to that of UHF channels and determining that “it is likely that the reception capabilities of an indoor antenna at low-VHF will generally be less than at high-VHF.”). Petitioner also notes that it will greatly improve the Station’s ability to provide ATSC 3.0 service to homes, vehicles, and portable devices. Petition at 1, 3. We do not, however, give any weight to the Petitioner’s arguments concerning ATSC 3.0 reception. The Bureau has consistently refused to consider this as a factor in channel substitution rulemaking proceedings since ATSC 3.0 is still in the early stages of

(continued....)

3. The Petitioner proposes to operate the Station on channel 29 with a 3-node Distributed Transmission System (DTS) facility.⁶ While an analysis using the Commission's *TVStudy* software indicates that the Station's move to channel 29 would create a predicted population loss area of 946,964 persons, mostly located around the edge of the channel 2 noise limited contour,⁷ almost all of the population would remain "well-served" by five or more full power or Class A television signals.⁸ According to the Petitioner, only 417 persons predicted to live in the loss area would no longer be considered "well-served," and none of those persons would receive over-the-air television service from fewer than four stations.⁹ All viewers within the Station's community of license will continue to be served by the Station.¹⁰

III. DISCUSSION

4. We believe that the Petitioner's channel substitution proposal for WGGWS warrants consideration. Channel 29 can be substituted for channel 2 at Greenville, South Carolina, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's Rules (rules),¹¹ at coordinates 34-56'-26.4" N. and 82-24'-40.4" 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.¹² Although the proposal would result in a loss of service to 946,964 persons, all but 417 persons would remain "well-served" by continuing to receive at least five full power or Class A stations. The 417 persons that would no longer be considered to be "well-served" would continue to receive service from at

deployment and the availability of consumer devices remains limited. *See e.g., Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Las Vegas, Nevada)*, MB Docket No. 21-221, Report and Order, DA 23-990 (MB rel. Oct. 18, 2023); *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Kalispell, Montana)*, MB Docket No. 23-79, Report and Order, DA 23-583 (MB rel. July 5, 2023).

⁶ Petition, Engineering Exh. at 1. The proposed DTS-1 transmitter site is the Station's presently authorized site, *id.* at 2, and the other two proposed sites are located near Hartwell and Hollingsworth, Georgia, *id.* at 3-5. According to the Petitioner, its proposed channel 29 facility meets all of the requirements of section 73.626(f) of the Commission's rules, 47 CFR § 73.626(f). *Id.* at 5-6.

⁷ *Id.*, Engineering Exh. at 7-8 and Exh. Q.

⁸ *Id.* at 5, citing *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) (concluding that the Commission is generally most concerned where the loss results in an area becoming less than well served, i.e., served by fewer than five full-power or Class A over-the-air signals).

⁹ *Id.*, Engineering Exh. at Exh. Q.

¹⁰ *Id.* at 5 and Engineering Exh. at Exh. B.

¹¹ 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).

¹² 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.

least four such stations. This is also a number of persons that the Commission has found to be *de minimis*.¹³

5. We propose to substitute channel 29 for channel 2 for WGS at Greenville with the following specifications:

<u>City and State</u>	<u>DTV Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Greenville, South Carolina	29	125	354

6. 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:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Greenville, South Carolina	2, *8, 17, 30	*8, 17, 29, 30

IV. PROCEDURAL MATTERS

7. *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

8. *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

9. *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 See *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that loss of service to approximately 550 persons is *de minimis*).

¹⁴ 47 CFR § 73.622(j).

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 (MB 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.

10. *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 petitioner, as follows:

Joseph C. Chautin, III, Esq.
Hardy, Carey, Chautin & Balkin, LLP
1080 West Causeway Approach
Mandeville, Louisiana 70471

11. *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 Rcd 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.

12. *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.²⁸ Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

13. *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.

14. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²⁹ do not apply to a rulemaking proceeding to amend the Table of TV Allotments, section 73.622(j) of the rules.³⁰ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.³¹ 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 2002.³²

15. *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).

16. *Additional Information.* For further information concerning the proceeding listed above, contact Joyce Bernstein, Video Division, Media Bureau, Joyce.Bernstein@fcc.gov.

V. ORDERING CLAUSES

17. **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

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 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.

²⁹ 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).

³⁰ 47 CFR § 73.622(j).

³¹ See 44 U.S.C. §§ 3501-3520.

³² See 44 U.S.C. § 3506(c)(4).

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

18. **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. 23-406 and RM-11969 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