

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

In the Matter of)	
)	
Amendment of Section 73.622(j),)	MB Docket No. 22-435
Table of Allotments, Television Broadcast)	RM-11940
Stations (Odessa, Texas))	
)	

REPORT AND ORDER

(Proceeding Terminated)

Adopted: March 1, 2023

Released: March 1, 2023

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 (Gray or Petitioner),² the licensee of television station KOSA-TV (KOSA-TV or Station), channel 7, Odessa, Texas. The Petitioner has requested the substitution of UHF channel 31 for VHF channel 7 in the Table of TV Allotments.³ The Petitioner filed comments in support of the petition, as required by the Commission’s rules (rules),⁴ reaffirming its commitment to apply for channel 31. No other comments were received.

2. We believe the public interest would be served by substituting channel 31 for channel 7 at Odessa, Texas. The proposed channel substitution will resolve significant over-the-air reception problems in KOSA-TV’s existing service area.⁵ 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.⁶ According to the Petitioner, although the proposed channel 31 facility would result in a slight reduction in the predicted population served, once terrain-limited coverage predications are taken into account, the proposed channel 31 facility will result in a loss of service to 36 people, a number which the Commission considers *de minimis*.⁷

¹ *Amendment of Section 73.622(j), Table of Allotments, Television Stations (Odessa, Texas)*, MB Docket No. 22-435, Notice of Proposed Rulemaking, DA 22-1279 (rel. Dec. 9, 2022) (*NPRM*).

² Petition of Gray Television Licensee, LLC for Rulemaking (filed Dec. 06, 2021, LMS File No. 0000176845) (Petition).

³ 47 CFR § 73.622(j).

⁴ 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).

⁵ *NPRM* at para. 2.

⁶ *Id.*

⁷ *Id.* *See also WSET, Inc.*, Memorandum Opinion and Order, 80 FCC 2d 233, 246 (1980) (finding that loss of service to approximately 550 persons is *de minimis*).

3. As proposed, channel 31 can be substituted for channel 7 at Odessa, Texas, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,⁸ at coordinates 31° 51' 50.8" N and 102° 34' 42.5" W. Although the Petitioner's proposal would result in a loss of service to 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 continue to access KOSA-TV's programming.⁹ In addition, we 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:¹⁰

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Odessa, Texas	31	500	226	317,311

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.¹¹ An expedited effective date is necessary in this case to ensure that KOSA-TV 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>
Odessa, Texas	9, 15, 23, *28, 30, 31

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 31.

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. 22-435 and RM-11940 **SHALL BE TERMINATED** and its docket closed.

9. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Video Division, Media Bureau, Joyce.Bernstein@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁸ 47 CFR § 73.625(a).

⁹ *Supra* para. 2 and note 7.

¹⁰ 47 CFR §§ 73.616, 73.623.

¹¹ 5 U.S.C. § 553(d)(3).