

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

In the Matter of)
)
Amendment of Section 73.622(j), Table of) MB Docket No. 23-79
Allotments, Television Broadcast Stations) RM-11947
(Kalispell, Montana))
)

NOTICE OF PROPOSED RULEMAKING

Adopted: March 1, 2023

Released: March 1, 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 January 9, 2023, by Sinclair Media Licensee, LLC (Petitioner), the licensee of KCFW-TV, channel 9, Kalispell, Montana (KCFW-TV or Station).1 The Petitioner requests the substitution of channel 17 for channel 9 at Kalispell, Montana in the Table of TV Allotments.

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner states that the Station has a long history of severe reception problems as a result of its operation on a VHF channel. The Petitioner further states that the Commission has recognized that VHF channels pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and result in large variability in the performance of indoor antennas available to viewers with most antennas performing very poorly on high VHF channels.2 According to the Petitioner, KCFW-TV "has received numerous complaints from viewers unable to receive that Station's over-the-air signal, despite being able to receive signals from other local stations."3 Petitioner asserts that its channel substitution proposal will serve the public in by resolving the over-the-air reception problems and enhancing viewer reception in KCFW-TV's service area.4 An analysis provided by the Petitioner using the Commission's TVStudy software tool indicates that all but

1 Petition of Sinclair Media Licensee, LLC for Rulemaking (filed Jan. 9, 2023), LMS File No. 0000206500 (Petition).

2 Petition at 1-2, 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) and Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03-185, Second Report and Order, 25 FCC Rcd 10732, 10750, para. 37 (2011); see also Petition, Engineering Statement at 1-2.

3 Petition at 2.

4 Id. at 2. Petitioner also notes that it will greatly improve the Station's ability to provide ATSC 3.0 service to homes, vehicles, and portable devices. Id. We do not, however, give any weight to the Petitioner's arguments concerning ATSC 3.0 reception given the early stages of deployment and limited availability of consumer devices.

approximately 75 persons will continue to receive the signal,⁵ a number the Petitioner asserts is *de minimis*.⁶ Furthermore, in addition to maintaining full coverage of its community of license, Petitioner notes that the proposed change to channel 17 will result in a predicted increase in service to more than 38,000 persons.⁷

III. DISCUSSION

3. We believe that the Petitioner's channel substitution proposal warrants consideration. Channel 17 can be substituted for channel 9 at Kalispell, Montana, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's Rules (rules),⁸ at coordinates 48-00'-48.0" N. and 114-21'-58.0" W.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.¹⁰ Although the proposal would result in a loss of service to a limited number of viewers (approximately 75 persons), that loss of service is considered *de minimis* by the Commission.¹¹

4. We propose to substitute channel 17 for channel 9 for KCFW-TV with the following specifications:

<u>City and State</u>	<u>DTV Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Kalispell, Montana	17	400	850

5. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,¹² for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Kalispell, Montana	9, *15	*15, 17

IV. PROCEDURAL MATTERS

6. *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

⁵ Petition at 3 and Engineering Statement at 2 and Exh. 1.

⁶ Petition at n.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 and n.70 (2007).

⁷ Petition at 3 and Engineering Statement at 2.

⁸ 47 CFR § 73.625(a).

⁹ Since the proposed facility is located within the Canadian coordination zone, concurrence from the Canadian government must be obtained for this allotment.

¹⁰ 47 CFR §§ 73.616, 73.623.

¹¹ See *WSET, Inc.*, Memorandum Opinion and Order, 80 FCC 2d 233, 246 (1980) (finding that loss of service to approximately 550 persons is *de minimis*).

¹² 47 CFR § 73.622(j).

and, if authorized, to build a station promptly.¹³ 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.¹⁴

7. *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.¹⁵
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁶

8. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,¹⁷ 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).¹⁸

- **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-19.¹⁹
 - 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

¹³ See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

¹⁴ 47 CFR § 1.420(j).

¹⁵ 47 CFR § 1.420(d).

¹⁶ 47 CFR § 1.420(g)(2).

¹⁷ 47 CFR §§ 1.415, 1.419, and 1.420.

¹⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

9. *Service.* Pursuant to section 1.420 of the rules,²⁰ 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.²¹ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Paul A. Cicelski, Esq.
Lerman Senter PLLC
2001 L Street, NW
Washington, D.C. 20036

10. *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.²² 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.²³ 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.²⁴ 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.²⁵ 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.

11. *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.

12. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²⁶ do not apply to a

²⁰ 47 CFR § 1.420.

²¹ See 47 CFR §1.420(a), (b) and (c).

²² 47 CFR §§ 1.1200 *et seq.*

²³ 47 CFR § 1.1208.

²⁴ 47 CFR § 1.1204(a)(10).

²⁵ 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).

²⁶ 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).

rulemaking proceeding to amend the DTV Table of Allotments, section 73.622(i) of the rules.²⁷ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.²⁸ 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 2002.²⁹

13. *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).

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

V. ORDERING CLAUSES

15. **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*.

16. **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. 23-79 and RM-11947 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

²⁷ 47 CFR § 73.622(i).

²⁸ See 44 U.S.C. §§ 3501-3520.

²⁹ See 44 U.S.C. § 3506(c)(4).