

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

In the Matter of)
)
Amendment of Section 73.622(j),) MB Docket No. 22-146
Table of Allotments, Television Broadcast) RM-11925
Stations (Memphis, Tennessee))
)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 9, 2023

Released: January 9, 2023

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking issued in response to a Petition for Rulemaking filed by Gray Television Licensee, LLC (Gray or Petitioner), the licensee of television station WMC-TV (WMC-TV or Station), channel 5, Memphis, Tennessee. The Petitioner has requested the substitution of UHF channel 30 for VHF channel 5 in the Table of TV Allotments. The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules), reaffirming its commitment to apply for channel 30. No other comments were received.

2. We believe the public interest would be served by substituting channel 30 for channel 5 at Memphis, Tennessee. The Petitioner states that the proposed channel substitution resolves significant over-the-air reception problems in WMC-TV's service area due to its operation on a low VHF channel, reception problems which the Commission has recognized exist on VHF channels. An analysis using the Commission's TVStudy software tool indicates that WMC-TV's move from channel 5 to channel 30 is predicted to create an area where 4,072 persons may lose service. The loss area, however, is largely overlapped by the noise limited contours of other NBC affiliated stations and most viewers will continue

1 Amendment of Section 73.622(j), Table of Allotments, Television Stations (Memphis, Tennessee), MB Docket No. 22-146, Notice of Proposed Rulemaking, DA 21-694 (rel. Apr. 5, 2022) (NPRM).

2 Petition of Gray Television Licensee, LLC for Rulemaking, as amended (filed Nov. 27, 2020, LMS File No. 0000127522) (Petition). Gray requested confidential treatment for certain information contained in the November 2020 Petition pursuant to sections 0.459 and 0.457 of the Commission's rules (rules), 47 CFR §§ 0.457, 0.459, and the Freedom of Information Act, 5 U.S.C. § 552. Gray amended the November 2020 Petition on February 10, 2022 (Amended Petition and Supplemental Engineering Statement) to provide a supplemental engineering statement with a further analysis of the population served by the proposed channel 30 facility, and to report that it had acquired three low power television (LPTV) stations which it intended to modify to better serve the predicted loss areas. Because the Amended Petition and Supplemental Engineering Statement did not include the confidential information or the legal and economic arguments on which it was based, we dismissed the November 2020 Petition. NPRM at n.1 and para. 17.

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 Amended Petition at 3; NPRM at para. 2.

to receive service from five or more stations,⁶ In addition, the Petitioner acquired three LPTV stations (WANF-LD, Dyersburg, Tennessee (channel 32); WDDY-LD, Jackson, Tennessee (channel 15); and W20DW-D, Clarksdale, Mississippi (channel 20)) and constructed modified facilities to deliver NBC programming to viewers in the loss area.⁷ As a result, only 64 persons would either (1) no longer receive NBC network programming or (2) no longer receive service from five or more full power television services.⁸ In practice, Gray expects that few, if any, persons who are currently able to receive WMC-TV's over-the-air signal on channel 5 would no longer be able to receive WMC-TV's over-the-air signal as a result of the Station's transition to channel 30.⁹

3. As proposed, channel 30 can be substituted for channel 5 at Memphis, Tennessee, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,¹⁰ at coordinates 35° 10' 09" N and 89° 53' 10" 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 NBC programming from another source. 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:¹¹

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Memphis, Tennessee	30	515	307.7	1,556,336

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.¹² An expedited effective date is necessary in this case to ensure that WMC-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

⁶ These stations are WTVA, Tupelo, Mississippi (channel 11), licensed to Mississippi TV License Company LLC; KAIT, Jonesboro, Arkansas (channel 27), licensed to the Petitioner; and WNBK-LD, Jackson, Tennessee (channel 16), licensed to CTT Licensee LLC. Supplemental Engineering Exhibit, Figures 2, 3.

⁷ Gray amended its Petition on December 29, 2022, to confirm that the three LPTV stations have been built and licensed, and that these stations are now operating and serving the predicted loss areas. See LMS File Nos. 0000205962, 0000203485, and 0000199038. While these LPTV stations, as well as WNBK-LD referenced above, *supra* note 7, are secondary and can be displaced, we believe that it is unlikely that these stations would be displaced and, if they were, the licensees would be able to find displacement channels for them. See *NPRM* at n.5.

⁸ Amended Petition at 5; Supplemental Engineering Statement at 4-5, Figure 3. The Commission has previously stated that it is "generally most concerned where there is a loss of an area's only network or NCE TV service, or where the loss results in an area becoming less that well-served, i.e., served by fewer than five full-power stations." *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).

⁹ Amended Petition at 5.

¹⁰ 47 CFR § 73.625(a).

¹¹ 47 CFR §§ 73.616, 73.623.

¹² 5 U.S.C. § 553(d)(3).

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>
Memphis, Tennessee	13, 23, 25, 28, *29, 30, 31, 33

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 30.

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. 22-146 and RM-11925 **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