

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

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

REPORT AND ORDER

(Proceeding Terminated)

Adopted: July 5, 2023

Released: July 5, 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 Sinclair Media Licensee, LLC (Petitioner),² the licensee of television station KCFW-TV (KCFW-TV or Station), channel 9, Kalispell, Montana. The Petitioner has requested the substitution of UHF channel 17 for VHF channel 9 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 17.⁵ No other comments were received.

2. We believe the public interest would be served by substituting channel 17 for channel 9 at Kalispell, Montana. 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.⁶ the Petitioner goes on to state that the Commission has recognized that VHF poses challenges for stations providing digital television service on those channels due to 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.⁷ 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.”⁸ Thus, the Petitioner asserts that its channel substitution proposal will serve the public by resolving the over-the-air reception problems and enhancing viewer reception in KCFW-TV’s service area. Moreover, an analysis conducted using the Commission’s TVStudy software tool indicates

¹ Amendment of Section 73.622(j), Table of Allotments, Television Stations (Kalispell, Montana), MB Docket No. 23-79, Notice of Proposed Rulemaking, DA 23-160 (rel. Mar. 1, 2023) (NPRM).

² Petition of Sinclair Media Licensee, LLC for Rulemaking, (filed Jan. 9, 2023, LMS File No. 0000206500) (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 Sinclair Media Licensee, LLC Comments (rec. Apr. 12, 2023) (Sinclair Comments).

⁶ NPRM at para. 2.

⁷ Id. at para. 2 and n.2.

⁸ Id. at para. 2.

that all but approximately 75 persons will continue to receive the Station's signal and the proposed change to channel 17 will result in a predicted increase in service to more than 38,000 persons.⁹

3. As proposed, channel 17 can be substituted for channel 9 at Kalispell, Montana, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,¹⁰ at coordinates 48° 00' 48.0" N and 114° 21' 58.0" W. Although the Petitioner's proposal would result in a loss for a limited number of viewers (75 persons), we find that the overall benefits of the proposed channel change outweighs any possible harm to the public interest when taking into account the fact that the Commission considers such a loss to be *de minimis*.¹¹ The channel substitution will also resolve the over-the-air reception problems for current viewers, enhance viewer reception in KCFW-TV's service area, and provide new service to more than 38,000 persons not currently able to receive the Station.¹² 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:¹³

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Kalispell, Montana	17	400	850	185,189

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.¹⁴ An expedited effective date is necessary in this case to ensure that KCFW-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>
Kalispell, Montana	*15, 17

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, Sinclair Media Licensee, LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 17.

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.

⁹ *Id.*

¹⁰ 47 CFR § 73.625(a).

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

¹² We do not give any weight to the Petitioner's arguments concerning ATSC 3.0 reception given the prospective nature of its claims and limited availability of consumer devices. See *NPRM* at n.4; Sinclair Comments at 2.

¹³ 47 CFR §§ 73.616, 73.623. Since the proposed facility is located within the Canadian coordination zone, concurrence from the Canadian government was required and has been obtained. See *NPRM* at n.9.

¹⁴ 5 U.S.C. § 553(d)(3).

8. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 23-79 and RM-11947 **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