

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

In the Matter of)	
)	
Amendment of Section 73.622(j),)	MB Docket No. 22-347
Table of TV Allotments, Television Broadcast)	RM-11932
Stations (Lincoln, Nebraska))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: September 8, 2023

Released: September 8, 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 The University of Nebraska (Petitioner),² the licensee of noncommercial educational (NCE) television station KUON-TV (KUON-TV or Station), channel *12, Lincoln, Nebraska.³ The Petitioner has requested the substitution of UHF channel *27 for VHF channel *12 in the Table of TV Allotments.⁴ The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules),⁵ reaffirming its commitment to apply for channel *27.⁶

2. We believe the public interest would be served by substituting channel *27 in place of channel *12 at Lincoln, Nebraska. In support of its channel substitution request, the Petitioner states that

¹ *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Lincoln, Nebraska)*, MB Docket No. 22-347, Notice of Proposed Rulemaking, DA 22-1009 (MB Sept. 26, 2022) (*NPRM*).

² Petition for Rulemaking filed by The University of Nebraska on September 14, 2022 (LMS File No. 0000199898) (Petition).

³ Noncommercial educational television stations are identified in the Table of TV Allotments by an asterisk to indicate they are reserved for NCE use. *See* 47 CFR § 73.622(a).

⁴ 47 CFR § 73.622(j).

⁵ 47 CFR §§ 1.415, 1.419; *see also Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-279, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009).

⁶ Comments of The University of Nebraska at 1 (filed Oct. 20, 2022) (The University of Nebraska Comments). On November 7, 2022, Flood Communications of Omaha, LLC (Flood), the licensee of low power television stations KOHA-LD, Omaha, Nebraska and KFDY-LD, Lincoln, Nebraska (Flood Stations) filed comments in opposition to the Petition arguing that the Flood Stations would be displaced. *See* Comments of Flood Communications of Omaha, LLC (filed Nov. 7, 2022) (Flood Comments). Petitioner submitted reply comments on November 21, 2022 replying to the Flood Comments. *See* Reply Comments of The University of Nebraska (filed Nov. 21, 2022). Flood later requested the withdrawal of the Flood Comments, and the parties entered into a settlement agreement to resolve Flood's concerns. *See* Withdrawal of Opposition filed by Flood Communications of Omaha, LLC (filed Aug. 17, 2023); *see also* Joint Request for Approval of Settlement Agreement, between The University of Nebraska and Flood Communications of Omaha, LLC (filed Aug. 18, 2023) (Joint Request for Approval of Settlement Agreement) (requiring, among other things, Flood to promptly file displacement applications for the Flood Stations and establishing a timeframe by which The University of Nebraska would wait to commence operations on channel *27). The Bureau has approved the Joint Request for Approval of Settlement Agreement simultaneously with the adoption of this Report and Order. *See* Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Derek Teslik, Esq. and Seth Williams, Esq. (Sept. 8, 2023).

the Station has a history of severe reception problems as a result of its operation on a VHF channel.⁷ The Petitioner also discussed the challenges and characteristics of VHF channels that have been recognized by the Commission regarding viewer reception.⁸ Thus, the Petitioner asserts that the proposed channel substitution will improve viewers' access to the Station's PBS and other public television programming by improving reception issues.⁹ According to the Petitioner, although the channel *27 facilities would result in a reduction in the Station's predicted population served within its noise limited service contour (NLSC), almost all of the predicted loss area is served by other PBS stations licensed to communities in Nebraska and Iowa, which largely air the same NCE programming as KUON-TV.¹⁰ According to the Petitioner, once terrain-limitations are factored into the analysis, the new loss area that would be created by the proposed channel substitution would contain only 342 persons, which it asserts is *de minimis*.¹¹

3. As proposed, channel *27 can be substituted for channel *12 at Lincoln, Nebraska, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,¹² at coordinates 41° 08' 18.0" N and 096° 27' 21.0" W. Although the Petitioner's proposal would result in a loss of PBS network programming to a limited number of viewers, we find that the overall benefits of the proposed channel change by resolving reception issues outweighs any possible harm to the public interest. When taking into account terrain limitations and the ability of viewers to obtain PBS programming from other nearby stations, we find that the Petitioner's proposal would result in a loss of NCE service to a *de minimis* number of persons.¹³ 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:

⁷ See *NPRM* at para. 2.

⁸ See Petition at 3 (discussing VHF channel characteristics that pose challenges for their use in providing digital television service).

⁹ See *id.* at 2.

¹⁰ See *NPRM* at para 2; Petition at 2 and Engineering Statement at Attachment C. These stations are KXNE-TV, Norfolk, Nebraska, and KHNE-TV, Hastings, Nebraska, licensed to the Nebraska Educational Telecommunications Commission, and KHIN, Red Oak, KBIN-TV, Council Bluffs, and KSIN-TV, Sioux City, Iowa, licensed to the Iowa Public Broadcasting Board.

¹¹ See *NPRM* at para 2; Petition at 2, citing *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding loss population of approximately 556 persons to be *de minimis*). The Commission has also 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 than well-served, *i.e.*, served by fewer than five full-power over-the-air signals." *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) (internal citations omitted). We note that the Petitioner used V-Soft Probe software to prepare its application, rather than the Commission's *TVStudy* software. While *TVStudy* is not required by Commission rules for determining viewer loss in this context, it is the Bureau's preferred software as it is used by staff to verify the information that is submitted. Utilizing the Commission's *TVStudy* software, a staff analysis confirms that the number of persons that would lose service, after factoring in the availability of PBS programming from other stations, would be *de minimis*.

¹² 47 CFR § 73.625(a).

¹³ See *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Roanoke, Virginia)*, MB Docket No. 23-14, Report and Order, DA 23-221, para. 3 (MB Mar. 15, 2023) (granting channel substitution and finding that although the petitioner's proposal would result in a loss of PBS network programming to a limited number of viewers, when taking into account the service provided by two NCE stations to petitioner's NLSC area, only a *de minimis* number of persons were predicted to lose access to the station's programming); *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding loss population of approximately 556 persons to be *de minimis*).

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Lincoln, Nebraska	*27	650	253	1,291,032

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 KUON-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>
Lincoln, Nebraska	8, 10, 15, *27

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, The University of Nebraska shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel *27.

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. 22-347 and RM-11932 **SHALL BE TERMINATED** and its docket closed.

9. For further information concerning the proceeding listed above, contact Emily Harrison, Video Division, Media Bureau, Emily.Harrison@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁴ 5 U.S.C. § 553(d)(3).