

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

In the Matter of)
)
Amendment of Section 73.622(j),) MB Docket No. 21-221
Table of TV Allotments,) RM-11908
Television Broadcast Stations)
(Las Vegas, Nevada))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 18, 2023

Released: October 18, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking issued on May 21, 2021, in response to a Petition for Rulemaking filed by Scripps Broadcasting Holdings, LLC (Petitioner or Scripps), the licensee of KTNV-TV (KTNV-TV), channel 13, Las Vegas, Nevada (Las Vegas). The Petitioner has requested the substitution of UHF channel 26 for VHF channel 13 in the Table of TV Allotments. King Kong Broadcasting, Inc. (King Kong), the licensee of low power television (LPTV) station KGNG-LD (KGNG-LD) on channel 26 at Las Vegas, filed opposition comments in which it opposes the channel substitution, and counter-proposes that channel 26 instead be allotted as a new vacant channel at Las Vegas. Scripps filed comments by the comment deadline in support of its rulemaking petition, as required by the Commission's rules (rules), reaffirming its commitment to apply for channel 26. Scripps filed a reply to King Kong's Opposition/Counterproposal, to which King Kong subsequently responded. For the reasons set forth below, we find that the Petitioner's proposal complies with all pertinent technical rules and that the public

1 Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Stations (Las Vegas, Nevada), MB Docket No. 21-221, Notice of Proposed Rulemaking, 36 FCC Rcd 8565 (MB 2021) (NPRM).

2 As noted in the NPRM at n.2, on April 13, 2017, the Commission completed the incentive auction and broadcast television spectrum repacking authorized by the Spectrum Act, and the post-incentive auction transition period ended on July 13, 2020. At the time the NPRM was issued, the Commission had not yet amended its rules to reflect all new full power channel assignments in a revised Table of Allotments. Accordingly, the NPRM referred to the Post-Transition Table of DTV Allotments, 47 CFR § 73.622(i) (2018). The Commission has now adopted the new Table of TV Allotments, 47 CFR § 73.622(j), and this Report and Order amends the new rule. See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction, GN Docket No. 12-268, Order, 36 FCC Rcd 15891 (2021).

3 Comments in Opposition of Petition for Rulemaking at 1, 6-7, and Engineering Statement at 1 (rec. July 5, 2021) (King Kong Opposition/Counterproposal). We note that King Kong's comments were filed in advance of the comment deadline established in the Federal Register. See 86 Fed. Reg. 32011 (June 16, 2021) (comments due in this docket no later than July 16 and reply comments no later than August 2, 2021).

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 (MB 2009).

5 Comments of Scripps Broadcasting Holdings, LLC (filed July 15, 2021) (Scripps Comments).

6 Reply Comments of Scripps Broadcasting Holdings, LLC (filed Aug. 2, 2021) (Scripps Reply); Reply Comments of King Kong Broadcasting, Inc. (filed Aug. 3, 2021) (King Kong August Reply).

interest would be served by substituting channel 26 for channel 13 for KTNV-TV at Las Vegas. We also deny King Kong's opposition and counterproposal.

II. BACKGROUND

2. In the *NPRM*, the Bureau sought comment on substituting channel 26 for channel 13 at Las Vegas. In the Petition, Scripps explained that digital VHF channels have propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and also results in nearby electrical devices causing signal interference.⁷ The Petitioner further stated that it has received many complaints from viewers unable to receive a reliable signal on channel 13.⁸ The Petitioner also demonstrated that only five persons were predicted to lose service under the proposed channel substitution.⁹ As noted above, Scripps filed comments in support of its rulemaking petition reaffirming its commitment to apply for channel 26.¹⁰

3. In its Opposition/Counterproposal, King Kong acknowledged that "generally, full-power stations have priority over LPTV stations in terms of channel allotments," but goes on to assert that "because Scripps' proposal would not serve the public interest, convenience and necessity, the Commission cannot grant such proposal."¹¹ In support of its assertion that grant of the channel substitution is not in the public interest, King Kong states that its principal, Laurence Hunt (Mr. Hunt), resides in Las Vegas, and as a result, King Kong has "ascertained the needs of the community" and "curated programming options designed to serve the entire community."¹² King Kong points to programming KGNG-LD airs which it characterizes as "targeted towards the ever-growing and traditionally underserved ethnic minority populations in the Las Vegas area."¹³

⁷ *NPRM*, 36 FCC Rcd at 8565, para. 2.

⁸ *Id.*

⁹ *Id.* at 8565-66, para. 2.

¹⁰ In its comments, Scripps acknowledged that King Kong filed an opposition prior to the comment deadline, *see supra* note 3, but that to avoid repetitive or duplicative submissions, it would respond to King Kong's opposition and counterproposal in reply comments filed by the established deadline for replies. Scripps Comments at n.1. Shortly thereafter, King Kong replied to Scripps' Comments, reiterating the arguments in its Opposition and stating that it was "reserving its rights to file a further reply" in the event Scripps later addressed the arguments in King Kong's Opposition/Counterproposal. Reply Comments of King Kong Broadcasting, Inc. at 2 (filed rec. July 28, 2021). Because King Kong merely reiterates the same arguments from its Opposition in its First Reply comments we do not summarize them below. We also note that ten individuals/entities also filed letters, in some cases multiple letters by the same individuals, in July, August, and September 2021, opposing the proposed channel substitution. *See e.g.*, Letter of Asian Culture TV, Edgardo Rendon, Chief Executive Officer to FCC (Rec. Jul. 26, 2021); Letter from Dale Wynn Davidson Ministries Inc., Dale Wynn Davidson, President to FCC (Rec. Aug. 2, 2021); Letter of Ivy Dane Hippler to FCC (rec. Sept. 20, 2021). Scripps contends that these individuals are programmers who provide programming to KGNG-LD and that although it was aware of the submissions, they were not served on Scripps and all were filed after the comment deadline. Scripps Reply at n.1. Scripps goes on to assert that it does not believe those letter filings raised any substantive legal arguments beyond those raised in the Opposition/Counterproposal, which Scripps has addressed in its Reply Comments. *Id.* As an initial matter we note that any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered as part of the proceeding. *NPRM*, 36 FCC Rcd at 3868, para. 10. Nevertheless, we agree with Scripps that the letters by programmers and viewers merely reiterate arguments raised by King Kong, i.e., that the public interest would not be served by allowing the displacement of KGNG-LD on channel 26 due to the content of its programming, and are addressed as part of our findings related to King Kong's Opposition/Counterproposal.

¹¹ King Kong Opposition/Counterproposal at 2.

¹² *Id.*

¹³ *Id.* For example, King Kong asserts that many of KGNG-LD's eleven digital channels are targeted towards the ethnic and minority populations in the Las Vegas market, including two channels offering Spanish language

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4. According to King Kong, if the Bureau were to grant Scripps' Petition, King Kong would be left with the option of either filing for displacement to move to channel 13 once it is vacated by KTNV-TV or cease operations. King Kong goes on to assert that even if it chose to seek displacement for KGN-LD, it would be subject to the Commission's mutual exclusivity rule that would subject its displacement application to competing applications¹⁴ and thus, the station could still be forced to cease operations. Further, according to King Kong, even if it were ultimately granted a construction permit to operate the station on channel 13 or another VHF channel, KGNG-LD "would likely be precluded from participating in the new ATSC 3.0 standard that would serve mobile users."¹⁵ Alternatively, King Kong notes that if the Commission grants its counterproposal and allots channel 26 to Las Vegas as a new allotment, in order to obtain a construction permit for UHF channel 26, King Kong would either have to be the sole applicant for the channel – an unlikely situation given Scripps' interest in the channel – or the winning bidder in a future Commission auction.¹⁶

5. Therefore, for the same technical reasons that Scripps is seeking to move from a VHF to a UHF channel, King Kong contends that the public interest would be better served if KGNG-LD remains on channel 26 and Scripps instead selects a different UHF channel for KTNV-TV.¹⁷ King Kong notes that there are at least eight other equivalent UHF channels available for KTNV-TV's use that are currently occupied by other LPTV stations.¹⁸ While King Kong acknowledges that one of these LPTV stations would be displaced if Scripps sought to move to its channel, King Kong asserts that "none of these eight UHF stations provide anywhere near the level of programming options offered by KGNG" or have principals with "the same level of longstanding ties to the Las Vegas community as Mr. Hunt possesses."¹⁹

6. Finally, King Kong alleges that the Petitioner "specifically targeted a move to King Kong's Channel 26 because Scripps may be interested in weakening KGNG due to KGNG's status as a strong competitor in Las Vegas."²⁰ According to King Kong, the selection of channel 26 was "a way of striking back at Mr. Hunt/King Kong" given disputes which it contends have arisen over the years between Mr. Hunt/King Kong and KTNV-TV employees.²¹

7. In its Reply, the Scripps argues that the Opposition/Counterproposal amounts to a request that King Kong "be afforded some type of enhanced regulatory status and be protected at the expense of other low power television stations in the market solely based on the content of its programming."²²

programming, one with programming aimed at African-Americans, and two channels available to Vietnamese speakers. *Id.* at 2-3.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 4. *See also id.*, Engineering Statement at 2-3 (arguing that being on channel 13 will likely preclude KGNG-LD from participating in ATSC 3.0 serving the mobile and portable users of these services since an antenna for channel 13 would need to be more than two feet wide).

¹⁶ King Kong Opposition/Counterproposal at 4.

¹⁷ King Kong Opposition/Counterproposal at 3-4. *See also id.*, Engineering Statement at 2 ("[T]here is no UHF channel available to which KGNG-LD can relocate with a similar facility like what is presently authorized.").

¹⁸ King Kong Opposition/Counterproposal at 4.

¹⁹ *Id.* at 6.

²⁰ *Id.*

²¹ *Id.* *See also* King Kong Opposition/Counterproposal, Declaration of Laurence Hunt, dated June 27, 2021 at para. 4 (alleging that "I believe that Scripps, even though it had plenty of UHF options to choose from, specifically chose to move KTNV to Channel 26 because Scripps wants to hurt me and King Kong" and that "Scripps may have picked Channel 26 as a further way of getting back at me, as a result of some business disputes dating back many years between me and some KTNV employees.").

²² Scripps Reply at 1-2.

Scripps states that as an LPTV station, KGNG-LD has secondary status and is therefore subject to interference from and displacement by full power stations.²³ According to Scripps, any Commission action ordering Scripps to displace one of the other LPTV stations suggested by King Kong “would fly in the face of longstanding precedent against making licensing decisions based solely on programming offered on KGNG.”²⁴ The Petitioner further asserts that King Kong’s argument that preserving its low power service on channel 26 would enable it to deliver ATSC 3.0 services in the future should also be disregarded. Specifically, the Petitioner cites to other channel substitution rulemaking proceedings where the Bureau has ruled that the impact of a proposed channel substitution on delivery of ATSC 3.0 service is not a factor as that service is still in the early stages of development and the availability of consumer devices remains limited.²⁵

8. Next, Scripps argues that King Kong’s claim that its decision to displace KGNG-LD is motivated by some sort of animus towards King Kong should also be rejected as vague, unsupported, and irrelevant.²⁶ Scripps notes that the disputes referenced by King Kong appear to be based in part on disputes between King Kong and the prior owner of KTNV-TV. According to Scripps, these disputes “are clearly not relevant to Scripps present motivations, which are in fact only to better serve its viewers.”²⁷ Scripps also asserts that even if there was animosity between the parties, that would have no impact on KGNG-LD’s secondary status or “the inappropriateness of asking the Commission to discriminate among low power licensees based on their programming.”²⁸ In fact, Scripps states that it sought to work with King Kong given the displacement and offered to donate Scripps’ channel 13 equipment to King Kong upon moving KTNV-TV to channel 26 and maintain, at Scripps’ expense, a temporary channel 13 facility for King Kong’s use at KTNV-TV’s downtown Las Vegas studio and tower facility.²⁹

9. Finally, with respect to King Kong’s counterproposal – that channel 26 be allotted as a vacant channel at Las Vegas and made available for application for all interested parties rather than reserved for Scripps’ use – the Petitioner observes that its proposal and King Kong’s counterproposal are indistinguishable, based on the Commission’s allotment priorities, since Scripps and King Kong both propose Las Vegas, a community that is already well-served.³⁰ According to the Petitioner, “thus, any

²³ Scripps Reply at 2, citing 47 CFR § 74.703 and *Balcones Broadcasting Limited*, Memorandum Opinion and Order, 3 FCC Rcd 2528, 2529, para. 9 (1988) (expressing “clear, unambiguous low power television policy” that “defined the new low-power television service as secondary to that of full power stations”).

²⁴ Scripps Reply at 3, citing *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 603 (1981); *National Broadcasting Co., Inc. v. United States*, 319 U.S. 190, 226 (1943). Scripps also notes that while King Kong highlights its own public service, it ignores the significant public interest of KTNV-TV’s own award-winning local news programming. Scripps Reply at n.9.

²⁵ *Id.* at 4, citing *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Eugene, Oregon)*, MB Docket No. 21-151, Report and Order, 36 FCC Rcd 10106, n.4 (MB 2021); *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Boise, Idaho)*, MB Docket No. 21-156, Report and Order, 36 FCC Rcd 10109, n.4 (MB 2021).

²⁶ Scripps Reply at 4-5

²⁷ *Id.* at 4, n.13.

²⁸ *Id.* at 4-5. In any event, the Petitioner concludes that “King Kong does not submit any actual evidence of such animus, and as such this claim must be rejected.” *Id.* at 5.

²⁹ *Id.* at 5.

³⁰ *Id.* at 5-6. Scripps cites to the Commission’s five television allotment priorities to: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television stations; and (5) assign any remaining channels to communities based on population, location, and the number of television services available to the community from stations in other communities. *Id.*

(continued...)

determination must be made based on the Commission's exercise of its general discretion to serve the public interest."³¹ The Petitioner argues that the Commission has routinely granted petitions such as Scripps' even when displacing LPTV stations, and the only result of granting King Kong's counterproposal would be to "unreasonably delay implementation of Scripps' proposal and resulting improved public service it would enable."³² Scripps highlights that the Bureau has acknowledged the public interest benefits associated with relocating a full power television station from a VHF to a UHF channel,³³ and also points out that King Kong is free to submit a rulemaking petition for a new channel allotment on any of the UHF channels it has identified as available in Las Vegas.³⁴

10. In its August Reply,³⁵ King Kong asserts that nowhere has Scripps provided an engineering explanation for why it needs to move to channel 26, as opposed to another UHF channel, and reaffirmed its position that Scripps is "unnecessarily targeting KGNG-LD as a means of removing a strong competitor."³⁶ King Kong contends that the Commission therefore must inquire into Scripps' motive before granting the Petition.³⁷ King Kong reiterates that while it understands that LPTV stations are secondary, a "harder look" should be afforded to any proposal "that would have the effect of eviscerating service to viewers of a low power station such as KGNG-LD, especially when the television services from such low power station are so valuable to so many distinct ethnic minority viewers."³⁸ It also argues again that if KGNG-LD is forced to move to a different channel, i.e., a VHF channel, or forced off the air altogether, then viewers in Las Vegas may be deprived of ATSC 3.0 service, because it is "highly likely" that KGNG-LD is one of the few or only LPTV stations in the market with the capability of delivering ATSC 3.0 services to the public.³⁹

III. DISCUSSION

11. Based on the facts presented, we deny King Kong's Opposition/Counterproposal and conclude that the Petitioner's proposal to substitute channel 26 for channel 13 at Las Vegas would serve the public interest and meets the Commission's technical and interference rules. As an initial matter, we deny King Kong's Opposition as it is axiomatic that LPTV stations, such as KGNG-LD, have secondary status and as such may not cause objectionable interference to existing full power stations, and must yield to or accept interference from existing full power stations that choose to modify where new interference

at n.15, citing *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148 (1952).

³¹ Scripps Reply at 5-6, citing 47 U.S.C. § 307(a)-(b).

³² Scripps Reply at 6. Scripps states that the Commission would need to utilize competitive bidding to determine the successful applicant if more than one application were filed, citing 47 U.S.C. § 309(j), and that "[t]his process would likely take several years, during which time viewers in the Las Vegas market would be deprived of the improved service KTNV could deliver on Channel 26." *Id.*

³³ Scripps Reply at 6.

³⁴ *Id.* at 7.

³⁵ Scripps argued that the Commission's rules do not provide for a second reply by King Kong, and requested an additional opportunity to respond to any additional filing by King Kong. Scripps Reply at 7-8 citing 47 CFR § 1.415(d). Scripps is correct that the rules do not authorize further filings by King Kong. For completeness of the record, however, we have considered King Kong's brief August Reply, and would have considered a response from Scripps. Scripps, however, chose not to file a response to King Kong's August Reply.

³⁶ King Kong August Reply at 1.

³⁷ *Id.* at 1-2.

³⁸ *Id.* at 2.

³⁹ *Id.* at 3.

will occur.⁴⁰ King Kong does not dispute this fact.⁴¹

12. Instead, King Kong asks us to disregard the station's secondary status and protect it from being displaced based on its specific programming. No basis exists under the Communications Act of 1934, as amended (Act), or the Commission's rules for granting a station greater protection than it is permitted under its license based on the content of its programming, and we refuse to do so here. In general, section 326 of the Act and the First Amendment of the U.S. Constitution prohibit the Commission from overseeing or regulating programming format.⁴² The Supreme Court of the United States has upheld the Commission's policy that "the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters . . ." ⁴³ While King Kong's service to its community and the wide variety of programming it airs may be commendable, it is not a justification to provide KGNG-LD greater protection than it is permitted under its secondary LPTV license or, as King Kong has requested, require Scripps to propose a different channel and instead displace other LPTV stations because those stations are either purportedly silent or the programming they are providing is, in King Kong's opinion, not as noteworthy as KGNG-LD's programming. Doing so would not only be contradictory with the Act, the First Amendment, and Commission precedent, but King Kong's argument with regards to its public service completely ignores efforts being undertaken by other stations in the market.⁴⁴

⁴⁰ See 47 CFR § 74.703; *An Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, BC Docket No. 78-253, Report and Order, 52 R.R.2d 476, 487, para. 17 (1982) (authorizing the LPTV service with secondary status) (subsequent citations omitted); *Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19333, paras. 2, 6 (2004) ("The low power television service consists of LPTV, TV translator, and television booster stations Stations in the low power television service are authorized with 'secondary' frequency use status.").

⁴¹ King Kong Opposition/Counterproposal at 2 and August Reply at 2.

⁴² 47 U.S.C. § 326 ("Nothing in this chapter shall be understood or construed to give the Commission the power of censorship . . . and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."); U.S. CONST., Amend. I. See also *Changes in the Entertainment Formats of Broadcast Stations*, Docket No. 20682, Memorandum Opinion and Order, 60 FCC 2d 858 (1976) (subsequent history omitted); *Multicultural Radio Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 20630 (2000).

⁴³ See *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 585 (1981)(*WNCN Listeners Guild*); see also *Riverside Broadcasting Co., Inc.*, 53 R.R.2d 1154, 1157 (1983), *recon. denied*, 56 R.R.2d 618 (1984), *remanded on other grounds sub nom.*, *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392 (D.C. Cir. 1985); *Letter to Jeff Kost and Marian Martinez*, 21 FCC Rcd 6223, 6224 (MB 2006).

⁴⁴ Scripps Reply at 3, citing *WNCN Listeners Guild*, 450 U.S. at 603 (the Court upheld Commission policy which "prefers reliance on market forces to its own attempt to oversee format changes at the behest of disaffected listeners"); *National Broadcasting Co., Inc. v. United States*, 319 U.S. 190, 226 (1943). King Kong provides a list of eight other LPTV stations that it claims should instead be displaced by Scripps. Among the list are LPTV stations in Las Vegas that King Kong asserts offer Spanish, French, and Chinese language programming, PBS programming, and other English language programming. King Kong Opposition/Counterproposal at 5. King Kong also asserts that two of the eight stations, K30PL-LD (now KGNU-LD), Las Vegas, Nevada (K30PL-D) and KVTE-LD, Las Vegas, Nevada (KVTE-LD) were silent. With regards to K30PL-D, King Kong correctly noted that the station was required to resume operations by October 30, 2021, or its license would automatically expire under section 312(g) of the Communications Act. 47 U.S.C. § 312(g). K30PL-LD resumed operations on October 29, 2021, and therefore avoided license cancellation. See LMS File Nos. 0000165492 and 0000165183. As to KVTE-LD, King Kong provides no evidence in the proceeding that the Station is in fact silent. Based on Commission records, both KVTE and K30PL are currently licensed and operating and neither of the stations' licenses appear to have expired pursuant to section 312(g) of the Act. As discussed herein, the operating status and programming aired by other LPTV stations in Las Vegas has no bearing on the fact that KGNG-LD is secondary and that Scripps is not required by the

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13. We also find King Kong's concerns related to its displacement and potential that viewers may entirely lose the station to be overstated and not grounds for denial of the Petition. Upon release of this *Report and Order*, King Kong will be eligible to file a displacement application for channel 13, or any other available channel. Commission records show that none of the other LPTV stations in Las Vegas are presently affected by pending or granted full power rulemaking petitions or full power modification applications. Therefore, because displacement applications are cut-off the day they are filed⁴⁵ and major modifications for LPTV stations are frozen,⁴⁶ it is highly unlikely that King Kong would face a competing application. With respect to KGNG-LD's future delivery of ATSC 3.0 services,⁴⁷ the Bureau has consistently refused to consider this as a factor in channel substitution rulemaking proceedings since ATSC 3.0 is still in the early stages of deployment and the availability of consumer devices remains limited.⁴⁸ We also fail to see, and King Kong fails to explain, why an LPTV station's ability to offer ATSC 3.0 services, namely service to mobile devices, justifies altering its status as a secondary service. In addition, in its Reply, King Kong points out that Scripps did not provide any engineering data to refute the availability of the eight other UHF channels identified by King Kong. Scripps, however, is not required to do so, and is free to choose any channel as a substitute channel that complies with our technical and community coverage requirements.

14. We also find King Kong's claim that Scripps chose to propose to move to channel 26, rather than another UHF channel, solely to vex King Kong and its principal, to be conjecture and unfounded. Not only is it difficult to see how this unidentified conduct could be attributed to Scripps since it appears to have occurred before Scripps acquired the Station, it is at odds with Scripps' offer to assist King Kong in constructing a low power facility on channel 13 – a fact that King Kong does not dispute.⁴⁹ Simply put, King Kong provides no direct evidence that Scripps' purpose in proposing channel 26 is to harm King Kong. Accordingly, based on the foregoing facts we find no basis for denying the Petitioner's request that we substitute channel 26 for channel 13 at Las Vegas.

15. Finally, we deny King Kong's Counterproposal that we allot channel 26 as a vacant channel open for application for all interested parties, rather than restricted for Scripps' use. Both parties propose the same community - Las Vegas - so their proposals cannot be distinguished under the Commission's television allotment policies.⁵⁰ In addition, Las Vegas already has seven allotted channels

Commission's rules or precedent, to specify another substitute channel other than channel 26 in order to avoid displacing KGNG-LD.

⁴⁵ 47 CFR § 74.787(a)(4) and (c).

⁴⁶ *Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations*, 25 FCC Rcd 15120 (MB 2010).

⁴⁷ ATSC 3.0 is the new TV transmission standard developed by the Advanced Television Systems Committee (ATSC) as the first Internet Protocol (IP)-based broadcast transmission platform, which merges the capabilities of over-the-air (OTA) broadcasting with the broadband viewing and information delivery methods of the Internet, using the same 6 MHz channels presently allocated for digital television service. See *Authorizing Permissive Use of the 'Next Generation' ATSC 3.0 Broadcast Television Standard*, GN Docket No. 16-142, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930 (2017).

⁴⁸ See Scripps Reply at 4 and n.11; see also *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Kalispell, Montana)*, MB Docket No. 23-79, Report and Order (DA 23-583, rel. July 5, 2023).

⁴⁹ Our decision here should not be interpreted to represent that full power television stations are in anyway required to assist LPTV stations that are displaced by an authorized technical modification and any discussions between a full power and LPTV related to the impact of a full power stations technical change is a private matter. Our finding is in no way based on Scripps' offer to assist King Kong in moving low power television station KGNG-LD to channel 13 or any other channel. However, this fact is being used in the context of King Kong's accusation that Scripps is purposefully attempting to harm King Kong.

⁵⁰ See *supra* note 30.

and under our allotment policies, which prioritize assigning two television channels to a community,⁵¹ is not entitled to an additional eighth channel at the expense of Scripps' channel substitution request. Moreover, the Bureau has repeatedly recognized public interest benefits associated with relocating a full power television station from a VHF to a UHF channel, especially where, as here, station viewers have complained of difficulties receiving the digital VHF signal and the proposed channel substitution will result in a loss of service to only 5 persons, a number the Commission considers to be *de minimis*.⁵² Finally, as observed by Scripps, if King Kong wishes to operate a full power television station in Las Vegas, it may file a petition for rulemaking to drop-in one of the eight UHF channels that it has identified as being available for Scripps' use in Las Vegas.⁵³

16. As proposed, we find that channel 26 can be substituted for channel 13 at Las Vegas, Nevada, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,⁵⁴ at coordinates 35° 56' 44.7" N and 115° 02' 37.6" W. We also find that the public interest benefits associated with relocating the Station from a VHF to a UHF channel outweighs any potential harms to existing viewers and favors grant over King Kong's counterproposal. In addition, the channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:⁵⁵

| <u>City and State</u> | <u>DTV Channel</u> | <u>DTV Power (kW)</u> | <u>Antenna HAAT (m)</u> | <u>DTV Service Pop.</u> |
|-----------------------|--------------------|-----------------------|-------------------------|-------------------------|
| Las Vegas, Nevada | 26 | 1000 | 606 | 2,096,608 |

IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED**, that the Comments in Opposition to Petition for Rulemaking filed by King Kong Broadcasting, Inc., and Counterproposal that the Bureau allot channel 26 as a new vacant channel at Las Vegas, Nevada, **ARE HEREBY DENIED**.

18. Pursuant to the authority contained in 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 Commission's rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS FURTHER ORDERED**, That effective 30 days after the date of publication of this *Report and Order*

⁵¹ *Id.*

⁵² See *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding loss population of approximately 556 persons to be *de minimis*). See e.g., *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Odessa, Texas)*, MB Docket No. 22-435, Report and Order, DA 22-1279, paras. 2-3 (Vid. Div. rel. Dec. 9, 2022) (granting channel substitution of channel 31 for 7 in order to resolve over-the-air reception problems, enhance viewer reception in the station's service area, and where service loss is *de minimis*).

⁵³ Scripps Reply at 7.

⁵⁴ 47 CFR § 73.625(a). The Commission recently amended its rules to create a new section 73.618 (Antenna location and principal community coverage), which relocates, verbatim, the language from section 73.625(a) (DTV coverage of principal community and antenna system). See *Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 at para. 37 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*). The amended rules are not effective as of the date of release of this Report and Order and as such we continue to make reference to 47 CFR § 73.625(a).

⁵⁵ 47 CFR §§ 73.616, 73.623. The Commission also recently amended its rules, including combining parts of sections 73.616(a) (Post-transition DTV station interference protection), 73.622(a), and 73.623(a) into one rule that includes all requirements for modifying a television allotment, modified section 73.622(a) (Table of TV allotments). *Part 73 Amendment R&O* at para. 38. The adopted order also relocated section 73.616(c), specifying the protected facilities of TV allotments, to new section 73.619(d). *Part 73 Amendment R&O* at para. 37. As these rule changes are not yet effective, we continue to make reference to 47 CFR §§ 73.616 and 73.623.

in the Federal Register, the Table of TV 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> |
|-----------------------|---------------------------|
| Las Vegas, Nevada | 2, 7, *11, 16, 22, 26, 29 |

19. **IT IS FURTHER ORDERED**, That within 30 days of the effective date of this Order, Scripps Broadcasting Holdings, LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 26 in lieu of channel 13.

20. **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.

21. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, MB Docket No. 21-221, RM-11908 **SHALL BE TERMINATED** and its docket closed.

22. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Attorney-Advisory, Video Division, Media Bureau at Joyce.Bernstein@fcc.gov and David Brown, Deputy Chief, Video Division, Media Bureau at David.Brown@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau