

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

In the Matter of
Amendment of Section 73.622(j),
Table of TV Allotments, Television Broadcast
Stations (Alamogordo, New Mexico)
MB Docket No. 23-281
RM-11958

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 20, 2023

Released: October 20, 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 Vision Broadcasting Network, Inc. (Petitioner). The Petitioner requests the allotment of reserved noncommercial educational (NCE) channel *4 to Alamogordo, New Mexico (Alamogordo), in the Table of TV Allotments as the community's first local television service. The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules), reaffirming its commitment to apply for channel *4 and if authorized, to construct the facility. No other comments were received.

2. We find the public interest would be served by allotting channel *4 at Alamogordo, which, as of 2020, has a population of 30,898 and clearly qualifies for community of license status for allotment purposes. Alamogordo is the county seat of Otero County and has its own seat of government consisting of a mayor, six Commissioners, and a city manager, as well as its own police, fire, public works, utility, planning, engineering, and community and economic development departments. Alamogordo also has a library, school district, numerous businesses and places of worship, and its own ZIP Code. The proposal would also result in a first local service to Alamogordo under the Commission's

1 Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Alamogordo, New Mexico), MB Docket No. 23-281, Notice of Proposed Rulemaking, DA 23-706 (MB Aug. 16, 2023) (NPRM); Vision Broadcasting Network, Inc.'s Petition for Rulemaking (filed May 6, 2023, LMS File No. 0000219128) (Petition).

2 NCE television stations are identified in the Table by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR §73.622(a). The Petition mistakenly refers to section 73.622(i) of the Commission's rules (rules), which has been replaced by section 73.622(j) of the rules. See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction, GN Docket No. 12-268, Order, 36 FCC Rcd 15891 (2021) (adopting new Table of TV Allotments to replace Post-Transition Table of DTV Allotments).

3 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).

4 Comments of Vision Broadcasting Network, Inc. at 2 (filed Aug. 28, 2023) (Vision Comments).

5 See NPRM at para. 2.

6 Id.

7 Id.

second allotment priority.⁸

3. The Petitioner demonstrates, and a staff engineering analysis confirms, that channel *4 can be allotted to Alamogordo consistent with the minimum geographic spacing requirements for new DTV allotments in section 73.623(d) of the rules,⁹ at 32° 49' 45" N and 105° 52' 16" W (allotment point). In addition, the allotment point complies with section 73.625(a)(1) of the rules as the entire community of Alamogordo is encompassed by the 35 dBμ contour.¹⁰

4. Accordingly, 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 ORDERED**, that effective thirty (30) days from the date of publication in the Federal Register,¹¹ 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:¹²

<u>City and State</u>	<u>Channel No.</u>
Alamogordo, New Mexico	*4

5. **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 The Commission determines a preferential arrangement of television allotments based on the following five priorities: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast 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 broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167-73 (1952).

⁹ 47 CFR § 73.623(d). The Commission recently amended its rules to relocate the text from section 73.623(d), relating to the minimum distance separations for new TV allotments, to a new section 73.622(k) (Table of TV allotments). *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. 38 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*). The amended rules are not yet effective as of the date of the release of this Report and Order, and, as such, we continue to make reference to 47 CFR § 73.623(d).

¹⁰ *See* 47 CFR § 73.625(a)(1). The Commission also 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 Part 73 Amendment R&O* at para. 37. As such, we continue to make reference to 47 CFR § 73.625(a)(1).

¹¹ Petitioner requested that the proposed allocation of channel *4 at Alamogordo become effective immediately upon publication of this Report and Order in the Federal Register. *See* Petition at 4; Vision Comments at 2. However, the Bureau ordinarily orders that such channel allotments take effect thirty days from the date of Federal Register publication because the allotment is subject to the application and selection procedures for reserved noncommercial educational television channels, and as an application window for such filings has not been announced, there is no urgency that would require us to advance the effective date. *See, e.g., Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Colusa, California)*, MB Docket No. 23-280, Report and Order, DA 23-980 (MB Oct. 16, 2023) (ordering that the proposed channel allotment take effect thirty days from the date of Federal Register publication). We therefore reject Petitioner's request.

¹² Concurrence from the Mexican government has been obtained for this allotment at Alamogordo, which is approximately 135 km from El Paso, Texas.

6. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 23-281, RM-11958, **SHALL BE TERMINATED** and its docket closed.

7. **IT IS FURTHER ORDERED**, That the newly allotted channel *4 at Alamogordo, New Mexico, **SHALL BE AUTHORIZED** pursuant to the Commission's application and selection procedures for reserved noncommercial educational television channels, 47 CFR §§ 73.7000 *et seq.*

8. 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