

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

In the Matter of)
)
Amendment of Section 73.622(j), Table of TV) MB Docket No. 24-4
Allotments, Television Broadcast Stations) RM-11974
(Waynesboro, Virginia))

NOTICE OF PROPOSED RULEMAKING

Adopted: January 11, 2024

Released: January 11, 2024

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division of the Media Bureau (Bureau), has before it a petition for rulemaking (Petition) filed January 9, 2024, by VPM Media Corporation (Petitioner).1 The Petitioner requests the allotment of reserved noncommercial educational (NCE) television channel *12 to Waynesboro, Virginia (Waynesboro), as the community’s first local television service and its first NCE television service.2

II. BACKGROUND

2. The Petitioner states that Waynesboro qualifies as a community for allotment purposes. In support, it states that Waynesboro is an independent and principal city of the Staunton-Waynesboro Metropolitan Statistical Area.3 As of the 2020 Census, Waynesboro had a population of 22,196 and the Staunton-Waynesboro Statistical Area had a population of 125,654.4 In addition, Waynesboro has its own ZIP Code, two post offices, city council, public school system, police department, and library.5 The Petitioner states its intention to file an application for channel *12 if allotted, and take all necessary steps to obtain a construction permit.6

III. DISCUSSION

3. We find the proposed amendment to the Table of TV Allotments warrants consideration. The Petitioner’s proposal would result in a first local service to Waynesboro under the second priority of the Commission’s television allotment priority standard.7 The Petitioner demonstrates, and a Bureau staff

1 VPM Media Corporation’s Petition for Rulemaking, LMS File No. 0000235050 (filed Jan. 9, 2024) (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).

3 Petition at 3.

4 Id.

5 Id.

6 Id.

7 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, 167-173 (1952) (emphasis added).

engineering analysis confirms, that channel *12 can be allotted to Waynesboro, consistent with the minimum geographic spacing requirements for new allotments in section 73.623(d) of the Commission's rules (Rules),⁸ at 37° 38' 24" N and 78° 27' 11" W (allotment point). In addition, the allotment point complies with section 73.625(a)(1) of the Rules as the entire community of Waynesboro is encompassed by the proposed 43 dBμ contour.⁹

4. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the Rules,¹⁰ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Waynesboro, Virginia	--	*12

IV. PROCEDURAL MATTERS

5. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (NPRM). The Petitioner or any proponent that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The Petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The Petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly.¹¹ Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the Rules.¹²

6. *Cut-off Protection.* The following procedures will govern the consideration of the filings in this proceeding:

- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.¹³
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁴

7. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,¹⁵ interested parties may file comments and reply comments on or before the dates indicated on the

⁸ 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 release of this NPRM.

⁹ See 47 CFR § 73.625(a)(1) and Petition at 2. 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 Report and Order* at para. 37.

¹⁰ 47 CFR § 73.622(j).

¹¹ See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, Report and Order, MB Docket No. 07-279, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

¹² 47 CFR § 1.420(j).

¹³ 47 CFR § 1.420(d).

¹⁴ 47 CFR § 1.420(g)(2).

¹⁵ 47 CFR §§ 1.415, 1.419, and 1.420.

first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).¹⁶

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Any paper filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington D.C. 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹⁷
 - During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

8. *Service.* Pursuant to section 1.420 of the Rules,¹⁸ all submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments.¹⁹ Additionally, a copy of such comments should be served on the Petitioner, as follows:

Ari Meltzer
Wiley Rein LLP
2050 M Street NW
Washington, D.C. 20036

9. *Ex Parte Notices– Restricted.* The proceeding this Notice initiates shall be treated as a “restricted” proceeding in accordance with the Commission's *ex parte* rules.²⁰ For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a notice of proposed rulemaking until the proceeding has been decided and such decision in the applicable docket is no longer subject to

¹⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁷ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

¹⁸ 47 CFR § 1.420.

¹⁹ See 47 CFR § 1.420(a), (b) and (c).

²⁰ 47 CFR §§ 1.1200 *et seq.*

reconsideration by the Commission or review by any court.²¹ An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.²² However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement.²³ Any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

10. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.²⁴ Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

11. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection via ECFS (<http://apps.fcc.gov/ecfs/>). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

12. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²⁵ do not apply to a rulemaking proceeding to amend the Table of Allotments, section 73.622(j) of the Rules.²⁶ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.²⁷ In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002.²⁸

13. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

14. *Additional Information.* For further information concerning the proceeding listed above, contact Emily Harrison, Video Division, Media Bureau by phone at (202) 418-1665 or by e-mail at Emily.Harrison@fcc.gov.

V. ORDERING CLAUSES

²¹ 47 CFR § 1.1208.

²² 47 CFR § 1.1204(a)(10).

²³ 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

²⁴ 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

²⁵ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

²⁶ 47 CFR § 73.622(j).

²⁷ See 44 U.S.C. §§ 3501-3520.

²⁸ See 44 U.S.C. § 3506(c)(4).

15. **IT IS ORDERED** that, pursuant to authority found in 47 U.S.C. 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 Rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS PROPOSED TO AMEND** the Table of TV Allotments, section 73.622(j) of the Rules, 47 CFR § 73.622(j), as set forth in this *NPRM*, and this *NPRM IS ADOPTED*.

16. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415, 1.419, 1.420 of the Rules, 47 CFR §§ 1.415, 1.419, and 1.420, interested parties may file comments, including counterproposals, on the *NPRM* in MB Docket No. 24-4 and RM-11974 on or before thirty (30) days after publication in the Federal Register and reply comments on or before forty five (45) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau