

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

In the Matter of)
)
Amendment of Section 73.622(j), Table of) MB Docket No. 24-112
Allotments, Television Broadcast Stations) RM-11981
(Jacksonville, Florida))

NOTICE OF PROPOSED RULEMAKING

Adopted: April 16, 2024

Released: April 16, 2024

By the Chief, Video Division, Media Bureau:

Comment Date: [30 days after date of publication in the Federal Register]

Reply Comment Date: [45 days after date of publication in the Federal Register]

I. INTRODUCTION

1. The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed January 19, 2024 and amended on January 30, 2024, by Multimedia Holdings Corporation (Petitioner), the licensee of WTLV, channel 13, Jacksonville, Florida (Station or WTLV).1 The Petitioner requests the substitution of channel 33 for channel 13 at Jacksonville, Florida (Jacksonville), in the Table of TV Allotments.2

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner states that its proposed channel substitution would serve the public interest by resolving persistent reception complaints it has received from viewers, and substantially improve the Jacksonville community’s access to the Station’s local news, emergency, NBC network, and other programming.3 The Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances.4 Additionally, the Petitioner notes that the Commission has observed “large variability in the performance (especially intrinsic gain) of indoor antennas available to consumers, with most antennas receiving fairly well at UHF and the substantial

1 Petition of Multimedia Holdings Corporation for Rulemaking (filed Jan. 19, 2024, and amended Jan. 30, 2024) on file at LMS File No. 0000235765 (Petition and Amended Exh. B - Technical Statement). The Petitioner amended its Petition at the staff’s request to provide an additional population loss and coverage analysis.

2 47 CFR § 73.622(j).

3 Petition at 1. According to the Petitioner, the Station “receives a steady stream of complaints from viewers unable to receive the station’s over-the-air signal, despite being able to receive signals from the other local stations.” Id. at 2-3 and Exhibit A (Viewer Feedback). Five of the seven channels allotted to Jacksonville are UHF channels. See 47 CFR § 73.622(j). WTLV’s sister station WJXX, channel 10, Orange Park, Florida, is also part of the Jacksonville, Florida Designated Market Area. Id. at 3.

4 Petition at 2, citing Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-235, Notice of Proposed Rulemaking, 25 FCC Rcd 16498, 16511, para. 42 (2010) (Channel Sharing NPRM).

majority not so well to very poor at high-VHF.”⁵ Petitioner further states that the Commission has recognized that although VHF reception issues are not universal, “environmental noise blockages affecting [VHF] signal strength and reception exist” and “[vary] widely from service area to service area.”⁶

3. An engineering statement provided by the Petitioner confirms that the proposed channel *33 contour would provide full principal community coverage to Jacksonville and would not cause impermissible interference to any station.⁷ Although an analysis provided by the Petitioner using the Commission’s *TVStudy* software tool indicates that the Station’s move to channel 33 will result in 274,303 persons no longer being located within the station’s noise limited service contour (NLSC),⁸ there are three other NBC affiliated TV stations whose NLSC overlaps with WTLV’s proposed NLSC. These stations serve all but 16,737 persons in the predicted loss area.⁹ Furthermore, according to the Petitioner, when the Commission’s *TVStudy* software is run for the Station’s licensed and proposed facilities with the “Study Area Mode” set to “unrestricted” to predict coverage outside the proposed NLSC, all viewers in the predicted loss area would continue to receive over-the-air NBC network programming.¹⁰ Thus, according to the Petitioner, although the proposed channel 33 facility would result in a reduction in the predicted population served, once service provided by other NBC stations and terrain-limited coverage predictions are taken into account, the proposed channel 33 facility will result in no loss of NBC service.¹¹

⁵ Petition at 2, citing *Channel Sharing NPRM*, 25 FCC Rcd at 16512, para. 44. We give no weight to the Petitioner’s argument that substituting UHF channel 33 for VHF channel 13 would improve the Station’s ability to offer ATSC 3.0 service over-the-air. 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. See *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Las Vegas, Nevada)*, MB Docket No. 21-221, Report and Order, DA 23-990 (MB Oct. 18, 2023); *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 (MB July 5, 2023).

⁶ Petition at 2, citing *Assessment and Collection of Regulatory Fees for Fiscal Year 2020*, MD Docket No. 20-105, Report and Order, 35 FCC Rcd 4976, 4997, para. 52 (2020).

⁷ Petition at 5; Amended Exh. B - Technical Statement.

⁸ See 47 CFR § 73.619 (defining the noise limited service contour (NLSC) of full power television stations and the method of computation) (formerly §§ 73.625(b) and 73.683(c)). The Commission recently amended its television rules to reflect the transition from analog to digital-only operations, the completion of the post-incentive auction transition, and to reorganize a portion of the part 73 rules to make them easier to find and more practical for users. See *Media Bureau Announces March 4, 2024 Effective Date for All Revisions to Part 73 Commission Rules for Full Power and Class A Television Stations*, MB Docket No. 22-227, Public Notice, DA 24-196 (rel. Mar. 4, 2024); *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. 40 (Sept. 19, 2023) (*Part 73 Amendment R&O*).

⁹ Amended Exh. B at 3-4 and Appx. C. These stations are WSAV-TV, Savannah, Georgia; WNBW-DT, Gainesville, Florida; and WESH, Daytona Beach, Florida. The Petitioner used V-Soft Probe-5, Version 5.40a, and the staff confirmed the Petitioner’s results using the Commission’s *TVStudy* software, which is available with no charge to the public.

¹⁰ Amended Exh. B at 3-4 and Appx. C. Reception of a station’s signal does not stop at the edge of a station’s NLSC. This is particularly the case where there is excessively flat terrain, such as in this area of Florida. As such, all 16,737 persons in the predicted loss area will continue to be able to receive the WTLV signal.

¹¹ Petition at 5; Amended Exh. B – Technical Statement at pp. 3-6 (“When considering [Longley Rice] coverage applied to the lost contour areas, no population is predicted to be lost according to 2010 census data.”). See *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Schenectady, New York)*, MB Docket No. 21-127, Notice of Proposed Rulemaking, 36 FCC Rcd 7073, 7074, para. 3 (MB Apr. 5, 2021) (“Petitioner submitted an analysis, using the Commission’s *TVStudy* software analysis program, demonstrating that after taking into account service provided by other CBS stations, all of the population located

(continued....)

III. DISCUSSION

4. We believe that the Petitioner's channel substitution proposal for WTLV warrants consideration. Channel 33 can be substituted for channel 13 at Jacksonville as proposed, in compliance with the principal community coverage requirements of section 73.618(a) of the Commission's Rules (rules),¹² at coordinates 30-16'-25" N. and 81-33'-12" W. In addition, we find that this channel change meets the technical requirements set forth in section 73.622(a) of the rules.¹³ Although the proposal is predicted to result in a loss of service to 274,303 persons, all of those persons would continue to receive over-the-air NBC network service either from other existing stations or while being located outside of WTLV's NLSC.¹⁴

5. We propose to substitute channel 33 for channel 13 for WTLV at Jacksonville with the following specifications:

<u>City and State</u>	<u>DTV Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Jacksonville, Florida	33	1000	290.4

6. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,¹⁵ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Jacksonville, Florida	*9, 13, 14, 18, 19, 20, *21	*9, 14, 18, 19, 20, *21, 33

IV. PROCEDURAL MATTERS

7. *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.¹⁶ 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.¹⁷

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

within WRGB's original post-DTV transition channel 6 noise limited contour will continue to receive CBS service, except for 30 people"); *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Odessa, Texas)*, MB Docket No. 22-435, Notice of Proposed Rulemaking, 37 FCC Rcd 14159, 14159, para. 2 (MB Dec. 9, 2022) (taking into account terrain-limited coverage populations to suggest that the loss area is considered *de minimis* by the Commission).

¹² 47 CFR § 73.618(a) (formerly § 73.623(c)). See also *supra* n.8 and *Part 73 Amendment R&O* at para. 40.

¹³ 47 CFR §§ 73.622(a) (formerly §§ 73.616 and 73.623). See also *supra* n.8 and *Part 73 Amendment R&O* at para. 40.

¹⁴ See *supra* para. 3 and n.9.

¹⁵ 47 CFR § 73.622(j).

¹⁶ See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-279, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009).

¹⁷ 47 CFR § 1.420(j).

- (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.¹⁸
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁹

9. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,²⁰ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).²¹

- **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-19.²²
 - 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.

10. *Service.* Pursuant to section 1.420 of the rules,²³ 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

¹⁸ 47 CFR § 1.420(d).

¹⁹ 47 CFR § 1.420(g)(2).

²⁰ 47 CFR §§ 1.415, 1.419, and 1.420.

²¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

²² See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

²³ 47 CFR § 1.420.

directed. A certificate of service shall accompany such comments and reply comments.²⁴ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Michael Beder, Esq.
Associate General Counsel
TEGNA Inc.
8350 Broad Street
Suite 2000
Tysons, Virginia 22102

11. *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.²⁵ 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 reconsideration by the Commission or review by any court.²⁶ 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.²⁷ 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.²⁸ 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.

12. *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.²⁹ Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

13. *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.

14. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,³⁰ do not apply to a

²⁴ See 47 CFR §1.420(a), (b) and (c).

²⁵ 47 CFR §§ 1.1200 *et seq.*

²⁶ 47 CFR § 1.1208.

²⁷ 47 CFR § 1.1204(a)(10).

²⁸ 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).

²⁹ 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.

³⁰ 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).

rulemaking proceeding to amend the Table of TV Allotments, section 73.622(j) of the rules.³¹ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.³² 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 2002.³³

15. *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).

16. *Additional Information.* For further information on the proceeding listed above, contact Joyce Bernstein, Video Division, Media Bureau, Joyce.Bernstein@fcc.gov.

V. ORDERING CLAUSES

17. **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*.

18. **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. 24-112 and RM-11981 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

³¹ 47 CFR § 73.622(j).

³² See 44 U.S.C. §§ 3501-3520.

³³ See 44 U.S.C. § 3506(c)(4).