

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

In the Matter of)	
)	
Amendment of Section 73.622(j))	MB Docket No. 23-336
Television Broadcast Stations)	RM-11967
(Wittenberg and Shawano, Wisconsin))	

REPORT AND ORDER

(Proceeding Terminated)

Adopted: January 24, 2024

Released: January 24, 2024

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 TV 49, Inc. (TV-49 or Petitioner), the permittee of an unbuilt television station on channel 31 allotted to Wittenberg, Wisconsin (Wittenberg).² The Petitioner has requested that the Commission delete channel 31 from Wittenberg and allot it to Shawano, Wisconsin (Shawano) in the Table of TV Allotments³ and modify its construction permit to specify Shawano as its community of license. TV-49 filed comments in support of the petition, as required by the rules,⁴ reaffirming its commitment to file for channel 31 at Shawano. No other comments were filed. For the reasons set forth below, we conclude that the public interest would be served by reallocating channel 31 from Wittenberg to Shawano in the Table of TV Allotments consistent with the technical parameters set forth in the Amended Petition.

2. Section 1.420(i) of the rules provides that the Commission, during a rulemaking proceeding to amend the Table of TV Allotments, may modify a station's permit to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁵ The Commission will apply this procedure in the limited circumstances in which: (1) the new allotment will be mutually exclusive with a station's existing allotment; (2) the new allotment will result in a preferential arrangement of the allotments according to the Commission's television allotment priorities;⁶ and (3) the new allotment will not deprive a community of its sole local

¹ *Amendment of Section 73.622(j), Television Broadcast Stations (Wittenberg and Shawano, Wisconsin)*, MB Docket No. 23-336, Notice of Proposed Rulemaking, DA 23-936 (rel. Oct. 6, 2023) (*NPRM*).

² Facility ID No. 776266. TV-49 filed its Petition on July 25, 2023 and amended the Petition on October 5, 2023 (Amended Petition) at the staff's request to propose a lower effective radiated power (ERP) in order to demonstrate it would not cause impermissible interference to WITI, Milwaukee, Wisconsin.

³ 47 CFR § 73.622(j).

⁴ 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).

⁵ 47 CFR § 1.420(i); *Modification of FM and TV Authorizations to Specify a New Community of License*, MM Docket No. 88-526, Report and Order, 4 FCC Rcd 4870, 4873, para. 22 (1989) (*Change in Community R&O*), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (*Recon MO&O*).

⁶ The Commission determines a preferential arrangement of allotments based on five priorities, the pertinent one here being the Commission's second priority, which is to provide each community with at least one television broadcast station. *See Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167, para. 63 (1952) (*Sixth Report and Order*).

transmission outlet.⁷ Generally, the Commission considers its prohibition on the removal of a community's first local service to be presumptively inconsistent with the public interest.⁸ The Commission, however, will waive its general prohibition on the removal of a community's sole first local service in the "rare circumstance" where such a removal might serve the public interest, for example, by providing a first reception service to a significantly sized population.⁹

3. The Technical Exhibit submitted with TV-49's Amended Petition demonstrates that the proposed allotment of channel 31 at Shawano is short-spaced to the current allotment at Wittenberg and thus, is mutually exclusive.¹⁰ We also conclude that the reallocation of channel 31 from Wittenberg to Shawano will result in a preferential arrangement of allotments in accordance with the Commission's second television allotment priority – to provide each community with at least one television broadcast station.¹¹ Shawano is the seat of Shawano County, in which both communities are located, and is nine times larger than Wittenberg.¹² As TV-49 has demonstrated, Shawano has the population and public services indicative of a community deserving of its own television station. For example, the Shawano school district operates five public schools and Northeast Wisconsin Technical College operates a Regional Learning Campus in Shawano.¹³ Shawano is governed by a mayor and six alderpersons, who collectively comprise its Common Council.¹⁴ Shawano also provides a number of municipal services, including but not limited to those provided through the Shawano-Bonduel Municipal Court, the Shawano Department of Public Works, the Shawano Police Department, and the Shawano Municipal Utilities.¹⁵

4. While based on the facts above we find that TV-49's proposal represents a preferential arrangement of allotments pursuant to the Commission's second allotment priority, grant of the proposed reallocation will remove Wittenberg's only local service, which the Commission generally prohibits.¹⁶ After reviewing the record, we find on balance that the public would benefit from grant of a waiver of our general prohibition on the removal of a community's first local service. Not only is Shawano a significantly more populated community, but the channel 31 facility has not yet been constructed, and thus no viewers have come to rely on any existing service, a factor the Commission has found to be mitigating in the context of whether it would remove the sole channel allotted to a community.¹⁷ Of equal

⁷ *Change in Community RO&O*, 4 FCC Rcd at 4874, para. 28.

⁸ *Recon MO&O*, 5 FCC Rcd at 7096, para. 17.

⁹ *Id.* See also 47 CFR § 1.3 (waiver for good cause shown). Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

¹⁰ Amended Petition at 4 and Technical Exhibit at 2 and Figure 1; see *NPRM* at para 3.

¹¹ See *supra* n.7.

¹² *NPRM* at para. 4. Shawano's Census 2020 population is 9,243 people, while Wittenberg's Census 2020 population is 1,015. *Id.* In fact, the city of Shawano is home to almost a quarter of the population of Shawano County, which had a total of 40,881 residents at the time of the 2020 U.S. Census. See Quick Facts, Shawano County, Wisconsin, U.S. Census Bureau, available at <https://www.census.gov/quickfacts/fact/dashboard/shawanocountywisconsin/PST045222> (last visited Jan. 22, 2024).

¹³ *Id.*

¹⁴ *NPRM* at para. 4.

¹⁵ *Id.*

¹⁶ See *supra* n. 9.

¹⁷ See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lake Havasu City, Arizona, and Laughlin, Nevada)*, MM Docket No. 99-114, Report and Order, 15 FCC Rcd 11664, 11665, para. 3 (MMB 2000) (finding that while the proposed reallocation would remove the only television channel allotted to Lake Havasu City, Arizona, the station had not yet commenced operation and therefore the reallocation proposal would not represent a loss of service to the residents of that community); *Amendment of Section 73.606(b), Table of*

(continued....)

significance is that fact that six licensed full power television stations currently provide noise-limited service to all of Wittenberg¹⁸ and TV-49 demonstrates that once the Station commences operations it will also provide noise-limited service to Wittenberg. In addition, the proposed allotment at Shawano is otherwise in compliance with all of our technical rules. As proposed, channel 31 can be allotted to Shawano in compliance with the principal community coverage requirements of section 73.625(a) of the rules,¹⁹ at coordinates 44° 46' 56.0" N and 88° 36' 32.0" N. Furthermore, we find that this proposed change in community of license meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:²⁰

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>
Shawano, Wisconsin	31	65	168

5. **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 ORDERED**, That effective 30 days after date of publication 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</u>
Shawano, Wisconsin	31
Wittenberg, Wisconsin	-

6. **IT IS FURTHER ORDERED**, That effective 30 days after the date of publication in the Federal Register, channel 31 is deleted from Wittenberg, Wisconsin and channel 31 is allotted to Shawano, Wisconsin. **IT IS FURTHER ORDERED**, That after the effective date, TV-49, Inc. **SHALL FILE** an application on FCC Form 2100, Schedule A requesting a modification of its construction permit, and pending the grant of aforementioned application, its community of license **SHALL BE MODIFIED** to Shawano, Wisconsin.

Allotments, Television Broadcast Stations (Farmington and Gallup, New Mexico), MM Docket No. 92-81, Report and Order, 11 FCC Rcd 2357, 2360, para. 19 (MMB 1996) (granting a change in community of license to a larger community and finding that any potential loss of service is mitigated by the fact that the station was unconstructed and not a service upon which the public has come to rely), *recon. denied*, 14 FCC Rcd 18983 (MMB 1999).

¹⁸ These are stations WSAW-TV, WAOW, and WHRM-TV, all licensed to Wausau, Wisconsin; WBAY-TV, Green Bay, Wisconsin; WJFW-TV, Rhinelander, Wisconsin; and WTPX-TV, Antigo, Wisconsin. *NPRM* at n.18. *See also Amendment of Section 73.622(i) Digital Television Broadcast Stations (Block Island and Newport, Rhode Island)*, MB Docket No. 18-153, Report and Order, 33 FCC Rcd 8773, 8775, para. 3, n.18 (MB 2018) ("The Commission considers a community 'well-served' when it is served by at least five full power over-the-air signals.")

¹⁹ 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 reference 47 CFR § 73.625(a).

²⁰ 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.

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. 23-336 and RM-11967 **SHALL BE TERMINATED** and its docket closed.

9. *Additional Information.* For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Video Division, Media Bureau by e-mail at Joyce.Bernstein@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
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