

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

In the Matter of

Amendment of Section 73.622(i),
Post-Transition Table of DTV Allotments,
Television Broadcast Stations.
(Dayton, Ohio)

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MB Docket No. 14-159
RM-11735

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 23, 2014

Released: December 23, 2014

By the Chief, Video Division, Media Bureau:

1. The Commission has before it a Notice of Proposed Rulemaking¹ issued in response to a petition for rulemaking filed by WKEF Licensee, L.P. ("WKEF Licensee"), the licensee of WKEF(TV), channel 51, Dayton, Ohio. WKEF Licensee requests the substitution of channel 18 for channel 51 at Dayton.

2. WKEF Licensee filed comments reaffirming its interest in the proposed channel substitution and explaining that the channel substitution will eliminate any potential interference with a wireless operator in the Lower 700 MHz A Block located directly adjacent to channel 51 in Dayton.² WKEF Licensee further states that upon adoption of the channel substitution, it will promptly file an application for a construction permit for channel 18 and place the station into operation.³

3. WISE-TV License, LLC, the licensee of WISE-TV, channel 18, Fort Wayne, Indiana, and its parent corporation, Granite Broadcasting Corporation (collectively "WISE-TV"), filed comments opposing the channel substitution at Dayton. WISE-TV argues that while WKEF Licensee's rulemaking petition showed interference to only 0.4871% of the population within WISE-TV's contour, in apparent compliance with the Commission's 0.5% *de minimis* interference standard, "this appearance of compliance is an artifact of mixing parameters measured with varying levels of precision."⁴ According to WISE-TV, "a determination of calculated interference to WISE-TV's licensed facilities using the Commission's OET-69 tv_process methodology with the highest available resolution for cell size (0.5 km per side) and also the highest available resolution for terrain extraction (10 points per kilometer) yields a percentage figure of

¹Dayton, Ohio, 29 FCC Rcd 11134 (Vid. Div. 2014).

² WKEF Licensee Comments at 1.

³ *Id.*

⁴ WISE-TV Comments at 2.

calculated interference of 0.6818% . . .”⁵ WISE-TV argues that because WKEF Licensee did not use “the highest available resolution for both cell size and terrain extraction,” its proposed channel substitution should be rejected as non-compliant with the Commission’s rules.⁶

4. In its reply comments, WKEF Licensee argues that its proposal to substitute channel 18 to Dayton complies with the Commission’s technical rules. According to WKEF Licensee, while “WISE-TV alleges that if a maximum threshold in one value (i.e., cell size) is used, the maximum value in the other value (terrain profile) must be utilized,” OET-69 and the Commission’s rules, which specify thresholds for cell size, are silent as to terrain profile.⁷ WKEF Licensee further explains that the Commission’s application processing software program, *tv_process*, is linked to a three arc-second terrain database, that the terrain increment in a three arc-second database is slightly less than 0.1 km, and thus, that “the choice of a terrain profile increment which is nearly the same as the increment in the terrain database employed is clearly acceptable.”⁸

5. We reject WISE-TV’s arguments. Section 73.616(e) of the Commission’s rules provides that “an application will not be accepted if it is predicted to cause interference to more than an additional 0.5 percent of the population served by another post-transition DTV station.”⁹ In order to evaluate compliance, applicants use the Longley-Rice analysis described in OET-69.¹⁰ The rule also specifically provides that applicants “may request the use of a cell size other than the default of 2.0 km per side, but only requests for cell sizes of 1.0 km per side or 0.5 km in size will be considered.”¹¹ It does not address terrain profile.

6. For purposes of section 73.616(e), a station’s population served is determined in accordance with section 73.622(e) of the rules.¹² That rule provides that service is considered available at locations within the station’s noise-limited contour where the station’s signal strength, using the terrain dependent Longley-Rice point-to-point propagation model, exceeds certain specified levels.¹³ Section 73.622(e) and the Longley-Rice model do not require applicants to use any specific distance between the locations at which they take signal strength measurements and we agree with WKEF Licensee that its use of 0.1 km increments is reasonable.¹⁴ We also agree that nothing in our rules requires an applicant using a 0.1

⁵ *Id.*; Engineering Statement at 1-2. In performing its study, WKEF Licensee used a 2 km cell size and 0.1 km terrain profile increments. WKEF Rulemaking Petition, Exhibit 1 at 3.

⁶ WISE-TV Comments at 2-3.

⁷ WKEF Licensee Reply at 2.

⁸ *Id.*, Exhibit 1 at 2.

⁹ 47 C.F.R. § 73.616(e).

¹⁰ *Id.* at (e)(1).

¹¹ *Id.* The Commission adopted the use of alternate smaller cell sizes for the Longley-Rice analysis because an analysis based on smaller cells is arguably more accurate, but limited the smaller sizes to 1.0 and 0.5 km in order to “discourage[e] the practice of ‘shopping’ for cell sizes, which doesn’t contribute to improved accuracy.” *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Report and Order, 23 FCC Rcd 2994, 3070-71, para. 165 (2007).

¹² 47 C.F.R. § 73.616(e)(1).

¹³ 47 C.F.R. § 73.622(e)(2).

¹⁴ As WKEF Licensee points out, in other proceedings the Commission has allowed proponents to make the necessary interference showing using 2 km cell size with 0.1 km terrain profile steps. *See, e.g., Boca Raton, Florida*, MM Docket No. 00-138, Report and Order, 17 FCC Rcd 7714 (Vid. Div. 2002), *recon. denied in relevant part*, 20 FCC Rcd 23528, 23530, para.8 (Vid. Div. 2002), *further recon. denied*, 20 FCC Rcd 9783, 9785, para. 7 (Vid. Div. 2005), *app. for review denied*, 22 FCC Rcd 15576 (2007).

km terrain increment to specify a 0.5 km cell size and WKEF Licensee's election to use the 2 km default cell size was permissible under our rules.

7. We believe the public interest will be served by substituting channel 18 for channel 51 at Dayton for the reasons stated by WKEF Licensee. Channel 18 can be substituted for channel 51 at Dayton, Ohio as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) of the Commission's rules, at coordinates 39-43-28 N. and 84-15-18 W.¹⁵ In addition, we find that this channel change meets the technical requirements set forth in Sections 73.616 and 73.623 of the Commission's rules with the following specifications:

City and State	Channel	Power (kW)	Antenna HAAT (meters)	Service Pop. (thous.)
Dayton, Ohio	18	525	351	3,508

8. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to Section 553(d)(3) of the Administrative Procedures Act.¹⁶ An expedited effective date is necessary in this case to ensure that station WKEF(TV) can promptly vacate channel 51 to make way for new wireless service by Lower 700 MHz A Block licensees.

9. 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, and Sections 0.61, 0.204(b) and 0.283 of the Commission's rules, IT IS ORDERED, That effective immediately after the date of publication of this Report and Order in the Federal Register, the Post-Transition Table of DTV Allotments, Section 73.622(i) of the Commission's rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City and State</u>	<u>Channel Nos.</u>
Dayton, Ohio	*16, 18, 30, 41, 50

10. IT IS FURTHER ORDERED, that the comments filed by WISE-TV License, LLC and Granite Broadcasting Corporation ARE DENIED.

11. IT IS FURTHER ORDERED, That within 30 days of the effective date of this Order, WKEF Licensee, L.P. shall electronically submit to the Commission a minor change application for a construction permit specifying channel 18 in lieu of channel 51 on Form 2100, Schedule A, using the Commission's Licensing Management System (<https://enterprisefiling.fcc.gov/dataentry/longin.html>).

12. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

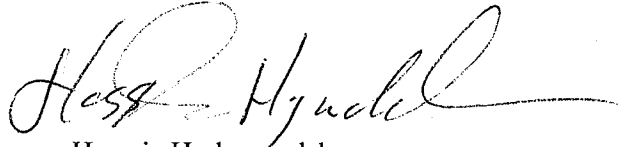
13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

¹⁵ The proposed facility is located within the Canadian coordination zone, and the Canadian government has concurred with this allotment.

¹⁶ 5 U.S.C. § 553(d)(3).

14. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Media Bureau, (202) 418-1647.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Hossein Hashemzadeh", written in a cursive style.

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau