

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington DC 20554**

In re:	)	
	)	
Nexstar Broadcasting, Inc.	)	MB Docket No. _____
	)	
Petition for Rulemaking to Amend	)	Rulemaking No. _____
the DTV Table of Allotments for	)	
Station WNLO(TV), Buffalo, New York	)	
(Facility 71905) and;	)	
	)	
WUTV Licensee, LLC	)	
	)	
Petition for Rulemaking to Amend	)	
the DTV Table of Allotments for	)	
Station WUTV(TV), Buffalo, New York	)	
(Facility 415)	)	

To: Office of the Secretary, Federal Communications Commission  
Attn: Chief, Media Bureau

**PETITION FOR RULEMAKING**

Nexstar Broadcasting, Inc. (“Nexstar”) and WUTV Licensee, LLC (“WUTV Licensee”), by counsel, hereby request that the Commission institute a rulemaking proceeding for the purpose of amending the Table of Allotments for the digital television service (“DTV Table”) contained in Section 73.622(i) of the Commission’s rules,<sup>1</sup> to change WNLO(TV)’s digital allotment from UHF Channel 32 to UHF Channel 36 and to change WUTV(TV)’s digital allotment from UHF Channel 36 to UHF Channel 32 consistent with the technical parameters as set forth in the attached Engineering Statement. As set forth

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<sup>1</sup> See 47 C.F.R. §§ 1.401, 73.622(i). The Petitioners recognize that the DTV Table has not been updated since the conclusion of Auction 1000 and that the Commission intends to adopt a fully revised DTV Table following the repack. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 n. 1545 (2014). The requested change should be included in the permanent DTV Table adopted by the Commission.

herein, grant of this Petition will create a preferential arrangement of allotments by expanding the availability of free, over-the-air television service in consideration of the technical constraints associated with the affected UHF television channels.

To the extent necessary, Nexstar and WUTV Licensee also request that the Commission waive its freezes on the filing and processing of petitions for digital channel substitutions and modification applications based on the showing of good cause contained herein.<sup>2</sup> Furthermore, because WUTV must complete its post-Incentive Auction transition by August 2, 2019, the parties request expedited consideration of the instant Petition.

## **I. INTRODUCTION AND BACKGROUND.**

Nexstar is the licensee of full power, non-repack, television station WNLO(TV), Buffalo, New York (Fac. ID 71905) (“WNLO”), a CW affiliate. Nexstar is also the licensee of WIVB-TV, Buffalo, New York (Fac. ID 7780) (“WIVB”), a CBS affiliate established in 1948 and Buffalo’s oldest television station. As a consequence of the Commission’s post-Incentive Auction repack, WNLO (Sharer) is channel sharing with the commonly-owned WIVB (Sharee). More specifically, on April 16, 2018, WIVB, suspended operations on its pre-auction UHF Channel 39 and began operating on a shared UHF Channel 32 with WNLO.<sup>3</sup> As a result of WIVB’s move to WNLO’s Channel 32 technical facilities, certain viewers that previously received a free over-the-air television signal from WIVB no longer receive WIVB over-the-air. Due to constraints on WNLO’s existing Channel 32, Nexstar is

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<sup>2</sup> See *Freeze on the Filing of Petitions for Digital Channel Substitutions, Effective Immediately*, Public Notice, 26 FCC Red 7721 (2011) (“*Substitution Freeze Notice*”); *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, Public Notice, 28 FCC Rcd. 4364 (MB 2013) (“*Modification Freeze Notice*”).

<sup>3</sup> See FCC File Nos. 0000035433 (Construction Permit) and 0000053321 (License to Cover).

unable to modify WNLO's technical facilities to restore service to these historical WIVB viewers.

WUTV Licensee is the licensee of full power television station WUTV(TV), Buffalo, New York (Fac. ID 415) ("WUTV"), a FOX affiliate. As part of the post-Incentive Auction repack, the FCC has mandated WUTV to transition from its existing UHF Channel 14 to UHF Channel 36 in Transition Phase 4 – by or before August 2, 2019.

Nexstar and WUTV Licensee desire to exchange the channels of WNLO and WUTV such that, upon completion of the swap, WNLO would operate on Channel 36 (currently assigned to WUTV in the post-Incentive Auction repack) and WUTV would operate on Channel 32 (currently assigned to WNLO). As proposed, WUTV would continue to operate from its existing transmission facilities – on Channel 32, and WNLO would move its facilities to the site previously vacated by WIVB and operate on Channel 36.

As the Commission is aware, WUTV recently sought and received a construction permit to construct its post-Incentive Auction Channel 36 transmission facilities at the facility site previously occupied by WIVB. See LMS File No. 0000034378, granted January 22, 2018 ("WUTV CP"). Thus, following Commission grant of the proposed channel swap, both stations would be required to submit minor modification applications. WNLO would seek Commission authority to construct a facility replicated from the WUTV CP, and WUTV would seek Commission authority to remain at its current facility and retool to Channel 32. With the impending Transition Phase 4 deadline approximately nine (9) months away, time is of the essence.

## II. GRANT OF THE REQUESTED REALLOTMENT IS IN THE PUBLIC INTEREST.

Grant of the requested channel substitution serves the public interest because it would allow for a more efficient allocation of UHF television channels. The FCC has described the goal of the DTV Table of Allotments as ensuring the provision of digital television service “to the American people in an expeditious and efficient manner.”<sup>4</sup> In considering channel substitution requests, the Commission considers the petitioner’s public interest justification and whether the proposal would comply with the principal community coverage requirements of Section 73.625(a).<sup>5</sup>

Here, the requested reallocation is in the public interest because it will resolve significant over-the-air reception problems in WIVB’s prior service area.<sup>6</sup> When WIVB began channel sharing with WNLO, many viewers in WIVB’s prior service area lost the ability to receive WIVB’s over-the-air signal. Although replicating WIVB’s former coverage area on WNLO would rectify this situation, WNLO cannot operate the same antenna pattern as WIVB on WNLO’s existing Channel 32. By moving from Channel 32 to Channel 36, WNLO will be able to relocate its transmission facilities to the former WIVB site, replicate WIVB’s antenna pattern, and restore over-the-air service to WIVB’s viewers. The

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<sup>4</sup> See, e.g., *In the Matter of Amendment of Section 73.622(B), Table of Allotments, Digital Television Broadcast Stations (Nampa, Idaho)*, Report and Order, 19 FCC Rcd. 4491, 4493 (2004); *In the Matter of Amendment of Section 73.622(B), Table of Allotments, Digital Television Broadcast Stations (In the Matter of Amendment of Section 73.622(B), Table of Allotments, Digital Television Broadcast Stations (Albany, New York))*, 19 FCC Rcd. 4329, 4331 (2004); see also *In the Matter of Advanced Television Systems & Their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd. 14588 ¶ 76 (1997).

<sup>5</sup> See, e.g., *In Re Amendment of Section 73.622(b), Table of Allotments, Digital Television Broad. Stations, Ontario, CA*, Notice of Proposed Rulemaking, 16 FCC Rcd. 2276 (2001); *In Re Amendment of Section 73.606(b), Table of Allotments, Television Broad. Stations, Moscow, Idaho*, Notice of Proposed Rulemaking, 17 FCC Rcd. 19447 (2002).

<sup>6</sup> See *In Re Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations, Missoula, Mt.*, Notice of Proposed Rulemaking, 16 FCC Rcd. 2232 (2001) (finding that proposal to substitute channels to improve signal coverage and eliminate interference “warrants consideration”).

reallocation would not affect the ability of WNLO or WIVB to comply with the principal community coverage requirements of Section 73.625(a). WUTV, meanwhile, can continue to operate from its existing transmission site on Channel 32 with no material impact to WUTV's viewers.

To the extent necessary to enable the grant of this Petition, Petitioners request waiver of the Media Bureau's current freeze on the filing and processing of petitions for digital channel substitutions and modification applications. The Media Bureau implemented the freeze on digital channel substitutions in May 2011 and the freeze on modification applications in April 2013 to "permit the Commission to evaluate its reallocation and repacking proposals and their impact on the Post-Transition Table of DTV Allotments"<sup>7</sup> and to "facilitate analysis of repacking methodologies".<sup>8</sup> Now that the auction is over and the repack is underway, grant of the instant Petition would have no impact on the Post-Transition Table of DTV Allotments or otherwise affect the analysis of repacking methodologies. Indeed, the Media Bureau already permitted full power, Class A, and low power stations to propose substitutions of their assigned channels as part of the post-auction transition.<sup>9</sup> Any potential effect of the reallocation is further minimized by the fact that the Petitioners are proposing to swap their assigned channels, meaning that no unallotted channels will be affected.

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<sup>7</sup> Substitution Freeze Notice.

<sup>8</sup> Modification Freeze Notice.

<sup>9</sup> See *Incentive Auction Closing and Channel Reassignment Public Notice the Broadcast TV Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final TV Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd. 2786 ¶ 71 (2017); *Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, And Make Location and Channel Data Available*, Public Notice, 33 FCC Rcd. 1234 ¶ 6 (IATF and MB 2018).

### III. CONCLUSION.

For the foregoing reasons, the proposed amendment to the DTV Table of Allotments will clearly serve the public interest. Petitioners therefore respectfully request that the DTV Table be amended in accordance with the specifications set forth in the attached Engineering Statement.

Respectfully submitted,

By: /s/ Paul A. Cicelski  
Paul A. Cicelski  
Lerman Senter PLLC  
2001 L Street, Suite 400  
Washington, DC 20036

*Counsel to WUTV Licensee, LLC*

Dated: October 30, 2018



**STATEMENT OF JOHN E. HIDLE, P.E.  
IN SUPPORT OF A REQUEST TO  
EXCHANGE DTV CHANNELS BETWEEN  
WUTV - BUFFALO, NEW YORK - Facility ID# 415  
DTV - CH. 36 - 800 kW - 415 m HAAT  
AND WNLO, BUFFALO, NEW YORK - Facility ID# 71905  
DTV - CH. 32 - 1000 kW - 329 m HAAT**

Prepared for: WUTV LICENSEE, LLC

I am a Consulting Engineer, an employee in the firm of Carl T. Jones Corporation, with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission. I am a Licensed Professional Engineer in the Commonwealth of Virginia, No. 7418, and New York State, No. 63418.

**GENERAL**

This office has been authorized by WUTV LICENSEE, LLC, licensee of WUTV, channel 14, facility ID number 415, licensed to Buffalo, New York, and permittee of WUTV, channel 36, CP file# 0000034378, also allotted to Buffalo, New York, to prepare this statement and associated exhibits in support of a request to exchange radio frequency DTV broadcast channels with WNLO, channel 32, facility ID number 71905, also licensed to Buffalo, New York. WUTV's CP authorizes it to relocate WUTV's post-repack channel 36 transmission facility to a tower structure, ASR 1006689, formerly used by WIVB-TV, to change its directional antenna pattern, to reduce its ERP to 800 kW and to increase its HAAT to 415 meters. It is this DTV channel 36 facility that is requested to become WNLO.

The current WNLO channel 32 facility was not changed in the repack allotment table. In anticipation of the requested channel exchange as herein requested, WNLO

**STATEMENT OF JOHN E. HIDLE, P.E.**  
**WUTV - Buffalo, New York**  
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submitted a minor change application, on December 8, 2017, that seeks to relocate its licensed channel 32 facility a distance of 0.5 miles to the tower, ASR 1019110, currently used by WUTV's channel 14 licensed facility.

**BENEFITS OF PROPOSED CHANNEL EXCHANGE**

Since WNLO is sharing its DTV facility with WIVB-TV as its sharee, its relocation to the former WIVB-TV tower site would benefit WIVB-TV by essentially restoring over-the-air signals to many viewers who are unable to watch WIVB-TV because WNLO is currently located further away. WUTV would benefit from the proposed channel exchange because it will be able to use a non-directional antenna.

Exhibit 1 shows the noise limited contours of three facilities. The currently licensed WNLO, ch 32, contour is shown in green and encompasses a population within the United States of 1,531,786 persons. The former licensed WIVB-TV, ch 39, contour is shown in blue and encompassed a population within the US of 2,330,492 persons. The proposed WNLO, ch 36 (current WUTV ch 36 CP) at the former WIVB-TV site is shown in red and encompasses a population within the US of 1,895,958 persons.

The net result of the sale of WIVB-TV at auction and its sharing with WNLO on ch 32 is a loss of population within the US of:  $2,330,492 \text{ minus } 1,531,786 = 798,706$  persons. As the exhibit shows, the proposed relocation of WNLO to the former WIVB-TV site and the exchange of channels from 32 to 36 will restore much, but not all, of the population lost as a result of the sale at auction of WIVB-TV and its sharing with WNLO. The population to be restored by this proposed exchange of channels is predicted to be  $1,895,958 \text{ minus } 1,531,786 =$  a regain of potential service to 364,172 persons.



**STATEMENT OF JOHN E. HIDLE, P.E.**  
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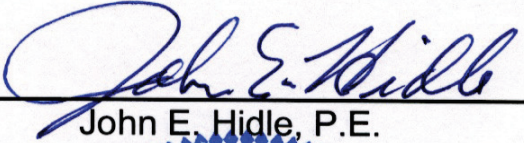
Exhibit 2 shows the noise limited contour of the WUTV, ch 36 allotment in red and the noise limited contour of the pending application of WNLO, ch 32, to relocate a distance of 0.5 miles to the WUTV site is shown in green. The total population gain predicted for WUTV within the US is: 1,583,577 minus 1,372,965 = 210,612 persons.


Overall everyone gains from the exchange of channels as proposed. There is no resulting attributable loss of population within the US in any instance.

**SUMMARY**

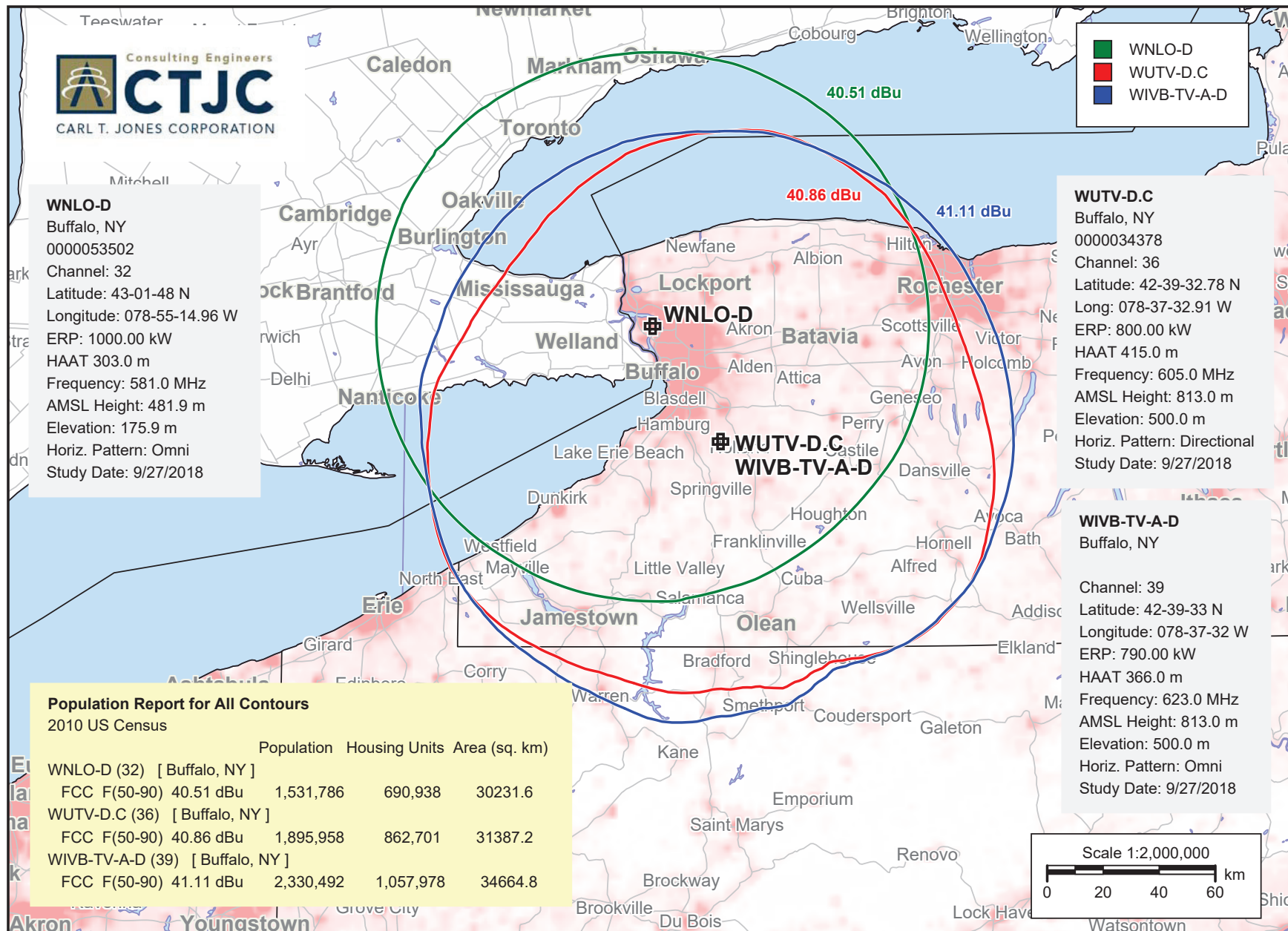
It is submitted that the instant request to exchange DTV channels between two stations in Buffalo, New York, as described herein, could accrue significant benefit to both stations, and it is believed that the request complies with the Rules, Regulations and relevant Policies of the Federal Communications Commission. This statement was prepared by me and the facts and opinions stated herein are believed to be true and correct to the best of my knowledge and belief.

DATED: October 29, 2018

  
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John E. Hidle, P.E.

  
COMMONWEALTH OF VIRGINIA  
J E HIDLE  
Lic. No. 007418  
PROFESSIONAL ENGINEER

# Exhibit One



## Exhibit Two

