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

In the Matter of	)	
	)	
	)	
Amendment of Section 73.622(i)	)	MB Docket No. 19-18
Post-Transition Table of DTV Allotments	)	RM-11823
(Gadsden and Hoover, Alabama)	)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 28, 2019 **Released: March 28, 2019**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. At the request of ION Media License Company, LLC (ION), licensee of digital television station WPXH-TV, channel 45, Gadsden, Alabama (WPXH), the Commission has before it an unopposed *Notice of Proposed Rulemaking* (*NPRM*) to amend the DTV Table of Allotments to reallot channel 45 from Gadsden to Hoover, Alabama.[1] ION also requested a temporary waiver of Section 73.625(a)(1) of the Commission's rules (Rules).[2] For the reasons below, we: (1) grant ION's request to change WPXH's community of license to Hoover, Alabama; (2) amend the Post-Transition Table of DTV of Allotments to reflect the change; (3) modify WPXH's license to reflect that its community of license is Hoover, Alabama; (4) condition any authorizations implementing this community of license change on continued service to Gadsden, Alabama; and (5) grant WPXH a temporary waiver of Section 73.625(a)(1) with respect to its pre-auction technical facility.

II. BACKGROUND

[1] *Amendment of Section 73.622(i), Table of Allotments, Post-Transition Table of DTV Allotments (Gadsden and Hoover, Alabama*), Notice of Proposed Rulemaking, DA 19-44 (rel. Feb. 5, 2019) (*NPRM*).

[2] 47 CFR § 73.625(a)(1). As explained in the *NPRM*, WPHX's currently authorized transmission facility places the required principal community coverage over 96.2 percent of the city of Hoover. *NPRM*, DA 19-44, para. 4. ION's authorized post-auction facility, LMS File No. 0000034874, which must be constructed no later than September 6, 2019, will place the required principal community signal over 100 percent of Hoover. *Id*.

1. On December 3, 2018, ION filed a petition for rulemaking proposing to reallot channel 45 from Gadsden to Hoover[3] pursuant to Section 1.420(i) of the Rules.[4] In the Petition, ION claimed that proposed reallotment is mutually exclusive with WPXH's current allotment because it is based on the technical specifications currently authorized for WPXH.[5] Second, ION claimed that the proposal represents a preferential arrangement of allotments under the Commission's second allotment priority by providing Hoover with its first local transmission service.[6] ION explained that Hoover (population of 81,619, compared to Gadsden's population of 36,856) qualifies as a community for allotment purposes and is the sixth largest city in Alabama.[7] ION noted that Hoover has an active government that provides "a full range of services such as E911 Emergency Services, Hoover Police Department, City of Hoover Fire Department, Public Works Department, and Utilities (including Water, Gas and Electricity, Garbage and Recycling)."[8] ION further noted that Hoover has seven hospitals/medical centers, two historic sites, two performing arts centers, a public library, a local newspaper, and numerous sports facilities.[9] Finally, ION claimed that the proposed reallotment will not deprive Gadsden of its sole broadcast station as it will continue to be served by station WTJP-TV, channel 26, licensed to Trinity Christian Center of Santa Ana, Inc.[10] As part of the Petition, ION requested a temporary waiver of Section 73.625(a)(1) of the Rules.[11]

2. On February 5, 2019, the Video Division issued the *NPRM*, which concluded that ION provided sufficient information to warrant further consideration of its requested temporary waiver of Section 73.625(a)(1) of the Rules and its proposal to amend the DTV Table of Allotments by deleting channel 45 at Gadsden and substituting channel 45 at Hoover.[12] Accordingly, the Video Division sought public comment on whether the Commission should grant the requested temporary waiver of Section 73.625(a)(1) of the Rules and the proposed reallotment.[13]

3. On March 15, 2019, ION filed comments expressing continued support for the proposed reallotment.[14] ION reiterated that the proposed reallotment would serve the public interest because it satisfies the Commission's second allotment priority.[15]

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[3] Petition for Rulemaking of ION Media License Company, LLC (filed Dec. 3, 2018) (Petition).

[4] *See* Petition at 1. Section 1.420(i) of the Rules provides that the Commission, during a rulemaking proceeding to amend the Table of Allotments, may modify a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. 47 CFR § 1.420(i); *see also Modification of FM and TV Authorizations to Specify a New Community of License*, 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*). The Commission will apply this procedure in the limited circumstances where: (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; and (3) the new allotment will not deprive a community of its sole local transmission outlet. *Change in Community R&O*, 4 FCC Rcd at 4874, para. 28.

[5] *See* Petition at 1-2.

[6] *Id*.

[7] *Id*. at 3.

[8] *Id*. at 4.

[9] *Id*.

[10] *Id*.

[11] *Supra* n.2.

[12] *NPRM*, DA 19-44, at para. 5.

[13] *Id*.

[14] Comments and Expression of Continued Interest of ION Media License Company, LLC (filed Mar. 15, 2019).

III. DISCUSSION

4. When evaluating such a proposal, the Commission compares the proposed reallotment against the existing allotment to determine whether the change would result in a preferential arrangement of allotments.[16] The Commission will consider any proposal to change the Post-Transition Table of DTV Allotments to be in the public interest if it satisfies one of the Commission's five allotment priorities.[17] Here, we find that the proposal represents a preferential arrangement of allotments pursuant to the Commission's second allotment priority by providing Hoover, the sixth largest city in Alabama, with its first local television service. Because Gadsden will not be deprived of its sole local service, we believe that grant of the proposed reallotment is in the public interest.[18]

5. Furthermore, Section 73.625(a)(1) of the Rules requires WPXH to provide a 48 dBu signal over the entire city of Hoover.[19] From its currently authorized transmission facility, WPXH will only be able to provide a 48 dBu signal over 92.6 percent of Hoover. We believe that this shortfall will be resolved when ION completes construction of WPXH's post-auction transmission facility.[20] Accordingly, we find it in the public interest to grant WPXH a temporary waiver of Section 73.625(a)(1) of the Rules until ION completes construction of WPXH's post-auction transmission facility or by September 6, 2019, whichever comes first.

IV. ORDERING CLAUSES

6. **ACCORDINGLY, IT IS ORDERED** that the Petition for Rulemaking filed by ION Media License Company, LLC, licensee of WPXH-TV, Gadsden, Alabama, **IS GRANTED.**

7. **IT IS FURTHER ORDERED** that, pursuant to the authority in Sections 154(i), 155(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended,[21] and Sections 0.61, 0.204(b), and 0.283 of the Rules,[22] the Post-Transition Table of DTV Allotments, Section 73.622(i) of the Rules, **IS AMENDED**, with respect to Gadsden and Hoover, Alabama, to read as follows:

	Channel No.	
City and State	Present	Amended
Gadsden, Alabama	26, 45	26

[15] *Id*. at 2.

[16] *Amendment of Section 3.606 of the Commission's Rules and Regulations,* Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952).

[17] *Id.* The five allotment priorities are: (1) to provide at least one television service to all parts of the United States; (2) to provide each community with at least one television broadcast station; (3) to provide a choice of at least two television services to all parts of the United States; (4) to provide each community with at least two television broadcast stations; and (5) to 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. *Id*.

[18] *Recon MO&O*, 5 FCC Rcd at 7096, paras. 16-17.

[19] *See* 47 CFR § 73.625(a)(1).

[20] *See* LMS File No. 0000034874.

[21] 47 U.S.C. §§ 154(i), 155(c)(1), 303(g) and (r), and 307(b).

[22] 47 CFR §§ 0.61, 0.204(b), and 0.283.

Hoover, Alabama	-	45

8. **IT IS FURTHER ORDERED** that, after filing the required application and paying the necessary fees, the authorization for station WPXH **WILL BE MODIFIED** to reflect that WPXH's community of license is Hoover, Alabama.

9. **IT IS FURTHER ORDERED** that ION Media License Company, LLC, request for temporary waiver of Section 73.625(a)(1) of the Rules with respect to WPXH's pre-auction transmission facility **IS GRANTED.**

10. **IT IS FURTHER ORDERED** that any authorization implementing this community of license change **IS CONDITIONED** upon continued service to Gadsden, Alabama.

11. **IT IS FURTHER ORDERED** that the Commission will send a copy of this order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[23]

12. **IT IS FURTHER OREDERED** that this proceeding **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[23] 5 U.S.C. §§ 801 *et seq*.