

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
(Bridgeport and Stamford, Connecticut)
MB Docket No. 18-126
RM-11800

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 8, 2019

Released: April 8, 2019

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. At the request of Connecticut Public Broadcasting, Inc. (CPBI), licensee of television station WEDW, channel *49, Bridgeport, Connecticut (WEDW), the Commission has before it a contested Notice of Proposed Rulemaking (NPRM) to change WEDW's community of license from Bridgeport to Stamford, Connecticut. CPBI filed comments supporting the NPRM. PMCM TV, LLC (PMCM) subsequently filed comments in opposition to the NPRM, to which CPBI filed a reply. For the reasons below, we: (1) grant CPBI's request to change WEDW's community of license to Stamford, Connecticut; (2) deny PMCM's opposition; (3) amend the Post-Transition Table of DTV Allotments to reflect the change; and (4) modify WEDW's license to reflect that its community of license is Stamford, Connecticut.

II. BACKGROUND

2. On August 23, 2017, CPBI filed a petition for rulemaking proposing to change WEDW's community of license from Bridgeport to Stamford (Petition) pursuant to Section 1.420(i) of the Commission's rules. CPBI claimed that the proposal is mutually exclusive with its existing allotment

1 Amendment of Section 73.622(i), Table of Allotments, Digital Television Broadcast Stations (Bridgeport and Stamford, Connecticut), Notice of Proposed Rulemaking, 33 FCC Rcd 3918 (Vid. Div. 2018) (NPRM).

2 Comments in Support of Notice of Proposed Rulemaking of Connecticut Public Broadcasting, Inc. (filed Aug. 6, 2018) (CBPI Comments).

3 Comments of PMCM TV, LLC (filed Aug. 6, 2018) (Opposition); Reply Comments of Connecticut Public Broadcasting, Inc. (filed Aug. 20, 2018) (Reply).

4 Petition for Rulemaking, as amended, of Connecticut Public Broadcasting, Inc. (filed Aug. 23, 2017) (Petition).

5 Id. at 1. We note that 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

because it would not affect the technical specifications currently authorized for WEDW.⁶ CPBI also claimed that Stamford qualifies as a community for allotment purposes and that the proposal would represent a preferential arrangements of allotment pursuant to the Commission's second allotment priority (Priority 2).⁷ CPBI noted that Stamford, with a 2010 U.S. Census population of 122,643, is the third largest city in Connecticut, the seventh largest city in New England, and a city where numerous Fortune 500 companies have located their corporate headquarters.⁸ However, Stamford does not have a full-power television station licensed to it.⁹ Finally, CPBI states that the proposal would not deprive Bridgeport of its sole broadcast station as it will continue to be served by full-power television station WZME, Bridgeport, Connecticut (WZME), licensed to NRJ TV NY License Co., LLC (NRJ).¹⁰

3. On May 14, 2018, the Video Division issued the *NPRM*, which concluded that CPBI provided sufficient information to warrant further consideration of its proposal.¹¹ Accordingly, the Video Division sought public comment on whether the Commission should grant CPBI's proposed community of license change.¹²

4. CPBI filed comments in support of the *NPRM* on August 6, 2018, reiterating its claims from the rulemaking petition.¹³ CPBI also stated that it "will promptly apply for a change of community of license when the change is made and will promptly implement that change within the time limit specified by the Commission."¹⁴

5. In its Opposition, PMCM raises four arguments for why the Commission should not grant the proposed change in community of license. First, PMCM argues that the proposal is inconsistent with the Commission's *Public Notice* partially lifting the freeze on the filing of changes to a station's community of license.¹⁵ Although the Petition did not propose to change WEDW's currently authorized technical facilities at the time of filing, PMCM states that CPBI was attempting to "sidestep" the *Public Notice*'s restriction on such changes by filing a request to relocate WEDW's technical facilities from Bridgeport to Stamford after filing the Petition.¹⁶ Second, PMCM argues that granting the proposal,

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 RO&O*, 4 FCC Rcd at 4874, para. 28.

⁶ Petition at 4.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* There are no broadcast television stations currently licensed to Stamford, Connecticut. See 47 CFR § 73.622(i).

¹⁰ Petition at 3. WEDW, as the host station, operates on channel *49 on a shared basis with WZME. LMS File Nos. 0000029677 (WZME license to cover shared operation on channel 49) and 0000029810 (WEDW modification of license for shared operation on channel *49), granted Sept. 20, 2017. Prior to channel sharing, WZME was licensed on channel 42 at Bridgeport, which NRJ relinquished pursuant to a successful license relinquishment bid in the broadcast incentive auction - the spectrum is now being licensed to new 600 MHz Band flexible use licensees. *Incentive Auction Closing and Channel Reassignment Public Notice; Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786, 2805, para. 61 (MB/WTB 2017). We note that the Commission will remove Channel 42, at Bridgeport, from the current Post-Transition Table of DTV Allotments when the Commission adopts the Post-Auction Table of DTV Allotments. *Expanding the Economic and Innovation*

coupled with that station's granted application to move the station closer to New York, is inconsistent with the public interest because the grant will result in a loss of service to substantial parts of central and southwestern Connecticut.¹⁷ Specifically, PMCM claims that 537,714 households - representing 2,612,775 people - would lose service.¹⁸ Third, PMCM argues that Stamford is merely "a dummy site" to achieve CPBI's real goal to serve New York City.¹⁹ PMCM claims that CPBI's distributed transmission system (DTS) application for WEDW²⁰ proposes to "broadcast from the Empire State Building over a large swath of New York and northern New Jersey, including the same portions of Westchester County, New York, western Long Island, and a number of counties in New Jersey."²¹ PMCM states that the Media Bureau rejected a similar proposal in 2009 after finding that such a proposal would "constitute[e] an 'effective reallocation' to New York."²² Finally, PMCM argues that granting the proposed change "will open the floodgates" to similar applications seeking to use the DTS rules "to effectively reallocate licenses," which would be inconsistent with the goals of Section 307(b) of the Communications Act of 1934, as amended.²³ Thus, PMCM suggests that the Commission expand this rulemaking proceeding, or open a new proceeding and hold the community of license proceeding in abeyance, while PMCM seeks comment on a number of issues relating to the Commission's rules and policies regarding DTS.²⁴

6. In its Reply, CPBI, in addition to reiterating its claims in the Petition, refutes PMCM's arguments in a footnote, claiming that PMCM's arguments should be rejected because they are "misplaced" and "without merit."²⁵ Specifically, CPBI notes that the December 2017 grant of its modification application to move WEDW's transmission facility to Stamford is final and therefore not subject to review.²⁶ CPBI also asserts that its pending DTS application is separate and apart from this rulemaking proceeding, should be considered on its own merits, and has no bearing on the proposed

Opportunities of Spectrum Through Incentive Auctions, Report and Order, 29 FCC Rcd 6567, 6706, para. 319 (2014).

¹¹ *NPRM*, 33 FCC Rcd at 3919, para. 4.

¹² *Id.*

¹³ CPBI Comment at 1.

¹⁴ *Id.*

¹⁵ Opposition at 2; *Media Bureau Partially Lifts the Freeze on the Filing of Petitions for Rulemaking to Change Full Power Television Stations' Communities of License*, Public Notice, 33 FCC Rcd 151(MB 2018) (*Public Notice*) (partially lifting the freeze on the filing of community of license changes that do not involve changes to a station's technical facilities).

¹⁶ Opposition at 2. The Commission granted CPBI's application to modify WEDW's channel 21 post-auction construction permit on December 1, 2017 (December 2017 grant). *See* LMS File No. 0000036047.

¹⁷ Opposition at 3.

¹⁸ *Id.* (citing *West Michigan Telecasters, Inc.*, Memorandum Opinion and Order, 22 FCC.2d 943 (1970)). PMCM also notes that the Commission "cannot even think of granting this petition under a normal 307(b) analysis." *Id.* (citing *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956)).

change in community of license.²⁷

III. DISCUSSION

7. First, we reject PMCM's argument that granting the proposal is inconsistent with the *Public Notice* partially lifting the freeze on the filing of changes to a station's community of license. As it relates here, the Commission lifted the freeze by restoring the normal processing of such petitions "*where no technical facility changes are required* to comply with the Commission's principal community coverage requirements."²⁸ In this case, the Petition did not request to change WEDW's authorized technical facilities nor is such a change required to comply with the Commission's community coverage requirements.²⁹ Therefore, we find that the Petition is consistent with the *Public Notice* and that CPBI did not need to file for a waiver of the 2004 Freeze.

8. Second, we reject PMCM's argument that the proposal is inconsistent with the public interest because it will cause substantial parts of central and southwestern Connecticut to lose service. Because the proposal is based on WEDW's currently authorized facilities, there will be no loss of service to central and southwestern Connecticut, as PMCM suggests.³⁰ In this regard, we conclude that the proposal is a preferential arrangement of allotments because it will provide Stamford, the third largest city in Connecticut, with its service first broadcast television service. We also reiterate that our grant of the proposal will not deprive Bridgeport of its sole broadcast television service because Bridgeport will continue to be served by station WZME.

9. Third, we reject PMCM's argument that the proposal will effectively relocate WEDW to New York City. As stated above, CPBI is not moving its currently authorized technical facilities from its site near Bridgeport. This means that WEDW's service area will remain the same. For these reasons, we

¹⁹ Opposition. at 5.

²⁰ LMS File No. 0000036047. A distributed transmission system is a DTV station that may be authorized to operate multiple synchronized transmitters on its assigned channel to provide service consistent with the requirements of section 73.626(a) of the Rules. 47 CFR § 73.626(a).

²¹ Opposition at 5.

²² *Id.* (citing *Letter to MTB-Bridgeport-NY Licensee LLC*, Letter Order (Vid. Div. 2009) (denying MTB Bridgeport-NY Licensee LLC's proposal to reallocate WSAH-DT's, Bridgeport, Connecticut – now WZME - to the Empire State Building).

²³ *Id.* at 6.

²⁴ *Id.* at 7.

²⁵ Reply at 2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Public Notice*, 33 FCC Rcd at 151 (*emphasis added*).

²⁹ *See Supra* n. 5.

³⁰ We disagree that WEDW's move from Bridgeport to a site near Stamford, Connecticut, pursuant to the December 2017 grant of a minor modification application, is inconsistent with the public interest. In addition to WEDW, the area in central and southwestern Connecticut that PCMSM identified would still receive service by at least one of the following full-power broadcast television stations licensed to CPBI: WEDH, Hartford, Connecticut (File No. BLEDT-20090618ACA); WEDY, New Haven, Connecticut (File No. 0000001041); and WEDN, Norwich, Connecticut (File No. BLED-20090618ACB).

find that the proposed reallocation will not cause any loss of service to central and southwestern Connecticut. Moreover, we will not consider any potential service gains or the merits of WEDW’s pending DTS application – which PMCM opposes – because the instant request for a change in community of license does not depend on Commission action on the pending DTS application. In other words, our grant of the proposal is separate and independent from our December 2017 grant of WEDW’s minor modification application to move its transmission facility or its pending application for a DTS facility.

10. Finally, we find it unnecessary to address PMCM’s argument that granting of the proposed reallocation “will open the floodgates” to similar applications seeking to use the DTS rules “to effectively reallocate licenses.”³¹ PMCM did not provide evidence supporting this argument, which is speculative at best. Therefore, we will not consider the merits of this argument in this rulemaking proceeding to change WEDW’s community of license from Bridgeport to Stamford, which does not propose any changes to WEDW’s technical facilities.

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that the Petition for Rulemaking filed by Connecticut Public Broadcasting, Inc., licensee of WEDW, Bridgeport, Connecticut, **IS GRANTED** only for the currently authorized technical facilities of the station.

12. **IT IS FURTHER ORDERED** that PMCM TV, LLC’s opposition to CPBI’s rulemaking petition to change WEDW’s community of license **IS DENIED**.

13. **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,³² and Sections 0.61, 0.204(b), and 0.283 of the Commission’s rules,³³ the DTV Table of Allotments, Section 73.622(i) of the Commission’s rules, **IS AMENDED**, with respect to Bridgeport and Stamford, Connecticut, to read as follows:

City and State	Channel No.	
	Present	Amended
Bridgeport, Connecticut	42, *49,	42, *49
Stamford, Connecticut	-	*49

14. **IT IS FURTHER ORDERED** that, after filing the required applications and paying the necessary fees, the authorization for station WEDW **WILL BE MODIFIED** to reflect WEDW’s community of license as Stamford, Connecticut.

15. **IT IS FURTHER ORDERED** that any authorization implementing this community of license change **IS CONDITIONED UPON** continued service to Bridgeport, Connecticut.

³¹ Opposition at 6.

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

³³ 47 CFR §§ 0.61, 0.204(b), and 0.283.

16. **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.³⁴

17. **IT IS FURTHER OREDERD** that this proceeding **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

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³⁴ 5 U.S.C. §§ 801 *et seq.*