

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

In the Matter of the Application of)
)
Amendment of Section 73.622(i)) MB Docket No. 21-54
Post-Transition Table of DTV Allotments) RM-11879
Television Broadcast Stations)
(Peoria and Oswego, Illinois))

NOTICE OF PROPOSED RULEMAKING

Adopted: February 12, 2021

Released: February 12, 2021

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division (Division) has before it a petition for rulemaking (Petition) filed by Four Seasons Peoria, LLC (Petitioner), licensee of television station WAOE, channel 10, Peoria, Illinois (WAOE or Station).1 Petitioner requests an amendment of the DTV Table of Allotments to delete channel 10 at Peoria, Illinois, and substitute channel 10 at Oswego, Illinois.2 Petitioner further requests modification of WAOE’s license to specify Oswego as its community of license pursuant to section 1.420(i) of the Commission’s rules (rules).3

II. BACKGROUND

2. 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.4 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

1 Four Seasons Peoria, LLC, Petition for Rulemaking (filed Nov. 27, 2020), LMS File No. 0000127616 (Petition).

2 Petition at 1, citing 47 CFR §§ 1.401, 1.420, and 73.622(i). On April 13, 2017, the Commission completed the incentive auction and broadcast television spectrum repacking authorized by the Spectrum Act. See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act). As a result of the Commission’s Incentive Auction and repacking process, WAOE was repacked from channel 39 to channel 10. See Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced, GN Docket No. 12-268, Public Notice, 32 FCC Rcd 2786 (2017). However, the Media Bureau has yet to adopt a revised Table of Allotments to reflect the new full power channel assignments that resulted from the Incentive Auction and repacking. For the purpose of this proceeding, we shall refer to WAOE’s repacked channel 10.

3 Petition at 1-2, citing 47 CFR § 1.420(i).

4 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).

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.⁵ The Commission determines a preferential arrangement of allotments based on the following five priorities: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) 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.⁶

3. Petitioner does not propose any changes in WAOE's authorized facilities and will continue to provide a principal community coverage signal both Oswego and Peoria from its currently authorized transmission facilities.⁷ Petitioner maintains that the proposed community of license change is mutually exclusive with WAOE's current allotment and therefore its proposal satisfies the requirement that its proposed allotment be "mutually exclusive with the licensee's present allotment."⁸

4. Petitioner asserts that Oswego qualifies as a community for allotment purposes.⁹ Petitioner maintains that Oswego, which, noted above, currently has no local television allotment, is the largest community within Kendall County, Illinois.¹⁰ Petitioner states that Oswego's population has increased almost ten-fold from 3,875 in 1990 to 34,383 today¹¹ and is expected to double by 2040.¹² Petitioner notes that Oswego has a fully autonomous municipal government led by a President and a seven-member Board of Trustees; as well as a professional management staff, led by a professional Village Administrator and a Village Clerk.¹³ Oswego has a full-service Police Department; schools, including six elementary schools, three junior high schools and two high schools; a Public Library District; and extensive Park District.¹⁴ Finally, Petitioner states that Oswego has its own ZIP Code; a local newspaper (the Oswego Ledger-Sentinel); chamber of commerce; multiple medical facilities; and is part of a transit system dedicated to serving residents of Kendall County.¹⁵

⁵ *Change in Community R&O*, 4 FCC Rcd at 4874, para. 28.

⁶ *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952).

⁷ Petition at 4. Therefore, Petitioner maintains, the proposal satisfies the requirement that it provide the required principal community coverage to its new community of license. *Id.* at 4 and Engineering Statement at 1.

⁸ *Id.*, citing 47 CFR § 1.420(i) and *In the Matter of Amendment of Section 73.622(i) (Cookeville and Franklin, Tennessee)*, Report and Order, MB Docket No. 18-383, 34 FCC Rcd 1082,1082-83, para. 1 (Vid. Div. 2019) (recognizing mutual exclusivity of proposed reallocation where it was "based on the technical specifications currently authorized for the station.").

⁹ *Id.* at 4. See also *Beacon Broadcasting*, 2 FCC Red 3469 (1987); and *Willows and Dunnigan, California*, 10 FCC Rcd 11522 (1995) (outlining the test for community status under section 307(b) of the Communications Act of 1934, as amended).

¹⁰ Petition at 2, citing Kendall County, Illinois, Economic Development, <https://www.co.kendall.il.us/departments/economic-development> (last visited Nov. 13, 2020); Les Christie, *Fastest Growing Counties in the U.S.*, CNNMoney (June 16, 2010), https://money.cnn.com/2010/06/16/real_estate/fastest_growing_counties/ (last visited Nov. 13, 2020).

¹¹ Petition at 2 and Exhibit A, Oswego Characteristics.

¹² Petition at 2, citing Village of Oswego, 2015 Comprehensive Growth Plan at 10 (2015), available at <http://www.oswegoil.org/OSWEGO2015COMPREHENSIVEPLAN.pdf>

¹³ Petition at 2-3 and Exhibit A.

¹⁴ *Id.* at 3 and Exhibit A.

¹⁵ *Id.* at 3-4 and Exhibit A.

5. Petitioner argues that its proposal represents a preferential arrangement of allotments under the Commission's second allotment priority because it will result in a first local television station for Oswego, which is the largest community in Kendall County, Illinois.¹⁶ Petitioner notes that WAOE's existing community of license, Peoria, will continue to have four full power local television stations licensed to it following the reallocation, and because WAOE is not proposing to modify its technical facilities, the community of license change will not adversely affect the service provided to Peoria.¹⁷ Accordingly, Petitioner concludes that application of the Commission's television allotment priorities favors a reallocation of channel 10 to Oswego.¹⁸

III. DISCUSSION

6. We believe that Petitioner's proposal warrants consideration. Accordingly, we seek comment on whether Petitioner has provided sufficient evidence indicating that its proposal to amend the DTV Table of Allotments in section 73.622(i) of the rules, as seen below, is consistent with the public interest:¹⁹

City and State	Channel No.	
	Present	Proposed
Peoria, Illinois	19, 25, 30, 39, *46	19, 25, 30, *46
Oswego, Illinois	-	10

IV. PROCEDURAL MATTERS

7. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (*NPRM*). Petitioner or any proponent that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly.²⁰ Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the rules.²¹

8. *Cut-off Protection.* The following procedures will govern the consideration of the filings in this proceeding:

- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.²²

¹⁶ *Id.* at 5 and Exhibit D, List of Television Stations in Illinois.

¹⁷ Petition at 5.

¹⁸ *Id.*

¹⁹ *See supra* note 2.

²⁰ *See, e.g., Buffalo, Iola, Normangee, and Madisonville, Texas*, Report and Order, MB Docket No. 07-279, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

²¹ 47 CFR § 1.420(j).

²² 47 CFR § 1.420(d).

(b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.²³

9. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,²⁴ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).²⁵

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Any paper filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.²⁶
 - During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

10. *Service.* Pursuant section 1.420 of the rules,²⁷ all submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments.²⁸ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

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Wiley Rein LLP
1776 Street NW
Washington, DC 20006

²³ 47 CFR § 1.420(g)(2).

²⁴ 47 CFR §§ 1.415, 1.419, and 1.420.

²⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

²⁶ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

²⁷ 47 CFR § 1.420.

²⁸ See 47 CFR § 1.420(a), (b) and (c).

11. *Ex Parte Notices– Restricted.* The proceeding this *NPRM* initiates shall be treated as a “restricted” proceeding in accordance with the Commission’s *ex parte* rules.²⁹ For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a notice of proposed rulemaking until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court.³⁰ An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.³¹ However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement.³² Any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

12. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection via ECFS (<http://apps.fcc.gov/ecfs/>). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

13. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,³³ do not apply to a rulemaking proceeding to amend the DTV Table of Allotments, section 73.622(i) of the rules.³⁴ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.³⁵ In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002.³⁶

14. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

15. *Additional Information.* For further information concerning the proceeding listed above, contact Shaun A. Maher, Video Division, Media Bureau, (202) 418-2324, Shaun.Maher@fcc.gov.

²⁹ 47 CFR §§ 1.1200 *et seq.*

³⁰ 47 CFR § 1.1208.

³¹ 47 CFR § 1.1204(a)(10).

³² 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

³³ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

³⁴ 47 CFR § 73.622(i).

³⁵ See 44 U.S.C. §§ 3501-3520.

³⁶ See 44 U.S.C. § 3506(c)(4).

V. ORDERING CLAUSES

16. **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 PROPOSED TO AMEND** the Post-Transition Table of DTV Allotments, section 73.622(i) of the rules, 47 CFR § 73.622(i), as set forth in this *NPRM*, and this *NPRM* **IS ADOPTED**.

17. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415, 1.419, 1.420 of the rules, 47 CFR §§ 1.415, 1.419, and 1.420, interested parties may file comments, including counterproposals, on the *NPRM* in MB Docket No. 21-54 and RM-11879 on or before thirty (30) days after publication in the Federal Register and reply comments on or before forty five (45) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau