

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j))	)	MB Docket No. 23-336
Television Broadcast Stations	)	RM-11967
(Wittenberg and Shawano, Wisconsin)	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: October 6, 2023**

**Released: October 6, 2023**

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, Media Bureau (Bureau) has before it a petition for rulemaking (Petition) filed by TV-49, Inc. (Petitioner or TV-49), the permittee of an unbuilt television station on channel 31 allotted to Wittenberg, Wisconsin (Wittenberg).<sup>1</sup> TV-49 requests an amendment of the Table of TV Allotments to delete channel 31 at Wittenberg and substitute channel 31 at Shawano, Wisconsin (Shawano), consistent with the technical parameters set forth in the Petition, as amended.<sup>2</sup> The Petitioner further requests modification of its construction permit to specify Shawano as its community of license pursuant to section 1.420(i) of the Commission's rules (rules), which provides that the Commission, during a rulemaking proceeding to amend the Table of TV Allotments, may also 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.<sup>3</sup>

**II. BACKGROUND**

2. The Commission has stated that it will apply the modification procedure in section 1.420(i) of the rules 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 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.<sup>4</sup> The Commission has

<sup>1</sup> TV-49, Inc. Petition for Rulemaking (filed June 22, 2023 and amended Sept. 15, 2023) (Amended Petition) on file at LMS File No. 0000218460.

<sup>2</sup> 47 CFR § 73.622(j).

<sup>3</sup> 47 CFR § 1.420(i).

<sup>4</sup> *Amendment of the Commission's Rules Regarding 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, 4873-4, paras. 22 and 28 (1989) (*Change in Community R&O*), recon. granted in part, 5 FCC Rcd 7094 (1990) (*Change in Community Recon MO&O*). The Commission determines a preferential arrangement of the 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. *Amendment of Section 3.606 of the*

(continued....)

stated that its prohibition on the removal of a community's first local service is justified because such a removal is presumptively inconsistent with the public interest.<sup>5</sup> However, the Commission has stated that it will entertain a request to waive its general prohibition on the removal of a community's sole first local service in the rare circumstance where such a removal might serve the public interest, for example, by providing a first reception service to a significantly sized population.<sup>6</sup>

3. The Technical Exhibit submitted with the Amended Petition demonstrates that the proposed allotment of channel 31 at Shawano is mutually exclusive with the current allotment at Wittenberg, and is otherwise in compliance with all of our technical rules.<sup>7</sup> The Petitioner emphasizes that Wittenberg will not lose any existing service because as a permittee, TV-49 has not commenced operations in Wittenberg, and thus no viewers have come to rely on any existing service, a factor the Commission has found to be mitigating in the context of whether it would remove the sole channel allotted to a community.<sup>8</sup> Moreover, the Petitioner states that the communities are only thirty miles apart and Wittenberg will still be within the noise limited contour of the channel 31 facility constructed at Shawano.<sup>9</sup>

4. The Petitioner asserts that providing Shawano, the county seat of Shawano County<sup>10</sup> and a community that is nine times larger than Wittenberg, with its first local television service is the type of "rare circumstance" which justifies a waiver of the general prohibition on the removal of a community's sole first local service.<sup>11</sup> According to the Petitioner, Shawano's Census 2020 population is 9,243 people, while Wittenberg's Census 2020 population is 1,015.<sup>12</sup> Shawano is governed by a mayor and six alderpersons, who collectively comprise its Common Council.<sup>13</sup> The Shawano school district operates five public schools, and there are also three religiously-affiliated private schools in Shawano.<sup>14</sup> Northeast

---

*Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952) (*Sixth Report and Order*).

<sup>5</sup> *Change in Community Recon MO&O*, 5 FCC Rcd at 7096, para. 17.

<sup>6</sup> *Id.* See 47 CFR § 1.3 (waiver for good cause shown). Waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest. In making this determination, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. See *Northeast Cellular Tel. Co., LP v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. *Id.* at 1166. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

<sup>7</sup> Amended Petition at 4 and Technical Exhibit at 2 and Figure 1.

<sup>8</sup> Amended Petition at 1-2 and n.2, citing *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lake Havasu City, Arizona, and Laughlin, Nevada)*, MM Docket No. 99-114, Report and Order, 15 FCC Rcd 11664, 11665, para. 3 (MMB 2000) (finding that while the proposed reallocation would remove the only television channel allotted to Lake Havasu City, Arizona, the station had not yet commenced operation and therefore the reallocation proposal would not represent a loss of service to the residents of that community); *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Farmington and Gallup, New Mexico)*, MM Docket No. 92-81 Report and Order, 11 FCC Rcd 2357, 2360, para. 19 (MMB 1996) (granting a change in community of license to a larger community and finding that any potential loss of service is mitigated by the fact that the station was unconstructed and not a service upon which the public has come to rely).

<sup>9</sup> Amended Petition at 1-2 and Technical Exhibit.

<sup>10</sup> Shawano County has a Census 2020 population of 40,881 persons. Amended Petition at. 4, n.11. Both Shawano and Wittenberg are located in Shawano County. *Id.* at. 6.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 4, 6.

<sup>13</sup> *Id.* at 4-5.

<sup>14</sup> *Id.* at 5.

Wisconsin Technical College also operates a Regional Learning Campus in Shawano.<sup>15</sup> Shawano also provides a number of municipal services through the Shawano-Bonduel Municipal Court, the Shawano Department of Public Works, the Shawano Police Department, and the Shawano Municipal Utilities.<sup>16</sup> Petitioner states that given the foregoing, it is clear that Shawano has the population and public services indicative of a community deserving of its own television station.<sup>17</sup> Moreover, the Petitioner asserts that six licensed full power television stations currently provide noise-limited service to all of Wittenberg<sup>18</sup> and the Petitioner demonstrates that once the Station commences operations it will also provide noise-limited service to Wittenberg.<sup>19</sup>

### III. DISCUSSION

5. We believe that the Petitioner's proposal warrants consideration. Although this change would remove the sole local service assigned to Wittenberg, it would add the first local service to Shawano, a significantly more populated municipality. Furthermore, Wittenberg would not only continue to receive noise-limited service from six full power television stations, but once the Station is constructed, would also receive noise limited service from channel 31. Accordingly, we seek comment on whether the Petitioner has provided sufficient evidence indicating that waiver of the Commission's general prohibition on the removal of a community's sole first local service is warranted and its proposal to amend the Table of Allotments in section 73.622(j) of the rules from channel Wittenberg to Shawano, as shown below, is consistent with the public interest.<sup>20</sup> We also believe that channel 31 can be allotted to Shawano, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the rules<sup>21</sup> at coordinates 44-46-56.0 N and 88-36-32.0 N.<sup>22</sup>

City and State	Channel No.	
	Present	Proposed

<sup>15</sup> *Id.* at 5. Petitioner also notes that the College of Menominee Nation, a tribal Land Grant college chartered by the Menominee People, has its main campus in Keshena, Wisconsin, just a few miles north of Shawano. *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Amended Petition at 7, Technical Exhibit at 2. These are stations WSAW-TV, WAOW, and WHRM-TV, all licensed to Wausau, Wisconsin; WBAY-TV, Green Bay, Wisconsin; WJFW-TV, Rhinelander, Wisconsin; and WTPX-TV, Antigo, Wisconsin. Technical Exhibit at 2, n.7. *See also Amendment of Section 73.622(i) Digital Television Broadcast Stations (Block Island and Newport, Rhode Island)*, MB Docket No. 18-153, Report and Order, 33 FCC Rcd 8773, 8775, para. 3, n.18 (MB 2018) ("The Commission considers a community 'well-served' when it is served by at least five full power over-the-air signals.").

<sup>19</sup> *See Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations (Willows and Dunnigan, California)*, MM Docket No. 94-29, 10 FCC Rcd 11522, 11523, paras. 7-10 (MMB 1995) (outlining the test for community status under Section 307(b) of the Communications Act of 1934, as amended), *recon. denied on other grounds*, 15 FCC Rcd 23852 (MMB 2000) (outlining the test for community of license status under section 307(b) of the Act).

<sup>20</sup> *Supra* at para. 2.

<sup>21</sup> 47 CFR § 73.625(a). The Commission recently amended its rules to create a new section 73.618 (Antenna location and principal community coverage), which relocates, verbatim, the language from section 73.625(a) (DTV coverage of principal community and antenna system). *See Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72, at para. 37 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*). The amended rules are not effective as of the date of release of this Notice of Proposed Rulemaking and as such we continue to reference 47 CFR § 73.625(a).

<sup>22</sup> *See* Amended Petition, Technical Exhibit at 2.

Wittenberg, Wisconsin	31	-
Shawano, Wisconsin	-	31

6. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (*NPRM*). The 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.<sup>23</sup> 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.<sup>24</sup>

7. *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.<sup>25</sup>
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.<sup>26</sup>

8. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,<sup>27</sup> 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).<sup>28</sup>

- **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

<sup>23</sup> See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009).

<sup>24</sup> 47 CFR § 1.420(j).

<sup>25</sup> 47 CFR § 1.420(d).

<sup>26</sup> 47 CFR § 1.420(g)(2).

<sup>27</sup> 47 CFR §§ 1.415, 1.419, and 1.420.

<sup>28</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

Street, NE, Washington D.C. 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.<sup>29</sup>
- 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.

9. *Service.* Pursuant to section 1.420 of the rules,<sup>30</sup> 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.<sup>31</sup> Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Matthew S. DeNero, Esq.  
Covington & Burling, LLP  
850 Tenth Street, NW  
Washington, D.C. 20001

10. *Ex Parte Notices—Restricted.* The proceeding this Notice initiates shall be treated as a “restricted” proceeding in accordance with the Commission's *ex parte* rules.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup> 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.

11. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will

---

<sup>29</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

<sup>30</sup> 47 CFR § 1.420.

<sup>31</sup> See 47 CFR § 1.420(a), (b) and (c).

<sup>32</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>33</sup> 47 CFR § 1.1208.

<sup>34</sup> 47 CFR § 1.1204(a)(10).

<sup>35</sup> 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).

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.

12. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,<sup>36</sup> do not apply to a rulemaking proceeding to amend the Table of TV Allotments, section 73.622(j) of the rules.<sup>37</sup> This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.<sup>38</sup> 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.<sup>39</sup>

13. *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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

14. *Additional Information.* For further information concerning the proceeding listed above, contact Joyce Bernstein, Video Division, Media Bureau, [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov).

#### IV. PROCEDURAL MATTERS

15. **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 Table of TV Allotments, section 73.622(j) of the rules, 47 CFR § 73.622(j), as set forth in this *NPRM*, and this *NPRM* **IS ADOPTED**.

16. **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. 23-336 and RM-11967 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

---

<sup>36</sup> 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).

<sup>37</sup> 47 CFR § 73.622(j).

<sup>38</sup> See 44 U.S.C. §§ 3501-3520.

<sup>39</sup> See 44 U.S.C. § 3506(c)(4).